March's

Actions for SLANDER, AND ARBITREMENTS.

The First, Being A Collection, under certain Grounds and Heads, of what Words are Actionable in the LAW, and what not: Where an Action De Scandalis Magnatum will lie: and of the Nature of A Libel.

The Other, A Discourse, shewing what Arbitrements are good in Law, and what not: Together with Directions, and Presidents of Conditions to perform Awards, Indentures of Submission to Awards, with Covenants to perform the same; Arbitrements of Lands which the Parties covenant to perform, or of Debt, &c. upon Submission by Bond, and variety of Pleadings therein.

As also, Certain Quæries, or Doubtful Cases, under proper Titles, with the Books cited *pro & contra*; Very Useful for all Students in the LAW.

First Written by *Jo. March* of *Grayes-Inn*, Barrister, in the Year, 1648.

And now Reviewed and Enlarged with many Useful Additions: By *W. B.*

London, Printed for *Elizabeth Walbanck*, at *Grayes*-Inn Gate in *Grayes*-Inn Lane, 1674.

To the Reader.

I *Queſtion not* (Reader) *but that thou art in ſome meaſure ſenſible of the Worth of theſe enſuing* Tracts, *in regard of the good eſteem they have generally received in the World, for more then Twenty Years laſt paſt; and certainly not undeſervedly, if we conſider the Author's care in chooſing a Method ſo conciſe and agreeable to the Memory, and his Curioſity in inſerting ſuch private Authentique Authorities (as he terms them, viz.) ſuch Excellent Manuſcripts for the Illuſtrating theſe his Induſtrious Compoſitions that are not elſewhere to be found publique, but in theſe Incomparable Diſcourſes.*

These Excellencies in the aforesaid Treatises *being considered with the Reflections had on the particular Use which may thereby arise aswell to those concern'd in the Lawes of this Kingdom, as others, I am perswaded there are very few Persons would willingly decline the Instructing themselves in the Learning our Author hath therein offered publickly for the good and benefit of his Countrymen, in regard it may be a means to render the Inquirers into these his Learned Disquisitions in a great measure serviceable not onely to themselves, but their Friends and Neighbours.*

For here our Author in the Exordium *to his* Actions *for* Slander, *doth sufficiently caution all Persons,* That they flee not to the Law out of Malice, nor make

the

the Courts of Juſtice Maintainers of every vain Brabble, *becauſe he look'd upon it* as utterly unlawful and intolerable among Chriſtians, et Malitijs hominum eſt obviandum, *as* Wray, *Chief Juſtice, ſaith in the Lord* Coke's *Fourth Book; according to which our Author declares, That he did not undertake this Work to encourage men in their Revilings, or to teach them a Lawleſs Dialect, but to direct and inſtruct them in the government of the Tongue, which (though but a little Member, as my Lord* Coke *obſerves in the place before mentioned) proves often the greateſt good, or the greateſt evil; and withall, to deter men from words which are but wind (as he further ſaith) which ſubject men to Actions in which Damages and Coſts are to be recovered, which uſually*

tend

tend to the great hindrance and impoverishment of the Speakers.

In like manner if we consider the great Use which all sober men may receive from our Author's well digested Treatise of Arbitrements, (both in respect of themselves and others) we shall find, that the Learning thereof will deserve no less esteem and veneration with all men than the former, as long as there shall be Differences and Contentions among them, for the several Reasons mentioned in the Præmium to Arbitrements, to which I refer you for more particular satisfaction.

In fine, this Book being formerly published in severall scattered parts, as they were occasionally written by the Author, perhaps might occasion the over-curious, not to prize it according to its intrinsique

trinſique worth; For avoiding of ſuch Critical Cenſures, care hath been taken in this Impreſsion *to unite the ſeveral parts of each* Treatiſe *into one entire correct Volume compleated with ſuch apt Additions as are ſuitable to the Author's Deſign and Method.*

W. B.

Actions

Actions for Slander.

OR,

A Methodicall Collection, under certain Grounds & Heads, of what words are Actionable, and what not

THE firſt part of my labour is to ſhew what words are actionable in the Law, and what not: In the proſecution of which it is not my purpoſe to run over all the Caſes that have been adjudged, neither can I, if I would; my intent is onely to lay down a certain rule or ground, upon which to go, (which will indeed be as a light to all Caſes of this nature) and having done ſo, to follow every particular thereof, with the moſt pertinent caſes that I find adjudged in the Law; which done, there will be very few caſes of conſequence hitherto adjudged omitted.

But before I enter upon this part of my labour, give me leave to premiſe this that I do not undertake this work, with an intent to encourage men in giving ill and unworthy language, or to teach them a lawleſs Dyalect, but (as my Lord *Coke* ſpeakes) to direct and inſtruct them rightly to manage that which Cok l. 4. fol. 20. b.

(though but a little member) proves often the greateſt good, or the greateſt evil to moſt men. And withall to deterre men from words, which are but winde (as he further ſpeakes) which ſubject men to actions, in which dammages and coſts are to be recovered, which uſually trench to the great hinderance and impoveriſhment of the ſpeakers.

And in truth that which cauſed me to enter upon this Labour, was the frequency of theſe actions; for I may with confidence affirm, that they doe at this day bring as much Gryſe to the Mill, if not more, than any one Branch of the Law whatſoever. And it were to be wiſhed (and certainly never in a better time than now) that the greateſt part of them were ſuppreſſed, that words only of brangle, heat and choler, might not be ſo much as mentioned in thoſe high and honourable Courts of Juſtice. For I profeſs for my part, I judge them to be a great diſhonour to the Law, and the profeſſors thereof; eſpecially when I conſider that they are uſed only as inſtruments to promote the malice, and vent the ſpleen of private jarres and diſcontents amongſt men.

1 Cor. 6. 5. The Apoſtle calling in queſtion the wiſdome of men, *for going to Law one with another*, is not to be intended (as the learned obſerve upon that place) generally to condemne all legall proſecutions, becauſe a man may without queſtion maintain his juſt rights and priviledges by Law, but only to reprehend the folly of ſuch who upon every ſlight and triviall accaſion (like many in theſe

theſe contentious times) care not to intayl a ſuit upon them and their poſterity; though in Fine they dock their own intayls without recovery: and juſtly may actions for words come within the compaſs of the Apoſtles exprobation.

I do not condemne all Actions for words neither, for it is but equall, that where a mans life, livelihood, or reputation (which is dearer to him than the former) is much endangered by ſcandalous words, that in ſuch caſe the offender ſhould be inforced by action to make compoſition; But that a man ſhould flee to the Law out of malice, and make the Courts of Juſtice maintainers of every ſmall and vain brabble, this ſeems to me utterly unlawfull and intollerable amongſt Chriſtians.

I cannot but take notice of that which *Wray, Chief Juſtice* ſaith in *Cookes* 4th Book. That though ſlanders and falſe reputations are to be repreſſed, becauſe that often times *a verbis ad verbera perventum eſt*; which I confeſs tends much to the diſturbance of the common peace, and therefore by all means poſſible to be prevented: Yet he ſaith, that the Judges have reſolved, that actions for ſcandalls ſhould not be maintained by any ſtrained conſtruction or argument, nor any favour extended for ſupportation of them. And he adds the reaſon of it, becauſe they do abound more in theſe days than in times paſt. And the intemperance and malice of men increaſes: *Et malitiis hominum eſt obviandum*; and further adds, that in our old Books, actions for Cook. lib. 1. f. 25.

ſcandalls are very rare and ſuch as are brought are for words of eminent ſlander, and of great importance.

Tis true that the Law doth in ſome caſes diſcountenance theſe actions, and therefore we have a rule, that words if they admit of a double conſtruction, ſhall alwaies be taken in the beſt ſenſe for him that ſpeaks them (as I ſhall make evident hereafter) becauſe uſually they are ſpoken in chollar and paſſion.

This I ſay the Law doth, where the words are amphibolous; but if the words are clearly actionable, in ſuch caſe the Law will never aid a man, though they were ſpoken in the diſtemper of paſſion: which ſeemeth very hard and unreaſonable.

Nay which is yet more extream, if Council ſhall but inform the Jury of the quality and reputation of the Plaintiff, and alſo make them underſtand if they be capable the true ſenſe and meaning of the words, and hainouſneſs of them; ſuch words, againſt ſuch a perſon; this inforced and preſt on by eminent Councell, ſhall make a Jury give a hundred Pounds dammages, whereas it doth not appear to them, that the Plaintiff by the ſpeaking of the words was prejudiced one farthing, a caſe of very great extremity, and worthy of relief.

And can any man deny, but that this is a countenancing of theſe frivilous Actions. But give me leave Reader, and I will in a word inform you how this may be remedied: and though the malice of men cannot be ſtopped, yet their Actions may.

Let

Let no words be actionable which do appear to have been ſpoken in choller and paſſion, or if actionable, yet let the plaintiff recover no more in damage, then he can upon Oath make appear, that he was actually damnified by the ſpeaking of them; and if this were provided by Act in Parliament, our new books would be as little infeſted with theſe frivolus actions, as the old ones are. But I cannot thus baulk that obſervation of that learned Chief Juſtice who ſaies, that in our old books Actions for ſcandals are very rare, and ſuch as are brought, are for words of eminent ſlanders, and of great importance.

This muſt needs be acknowledged to be a moſt exact and true obſervation, for in ſearching of the Books, I cannot find that any action for ſcandalous words was brought before *E.* 3. time, and ſo rare then, that I find but one in fifty years of *E.* 3. and that in Sir *Thomas Seton's* caſe of Juſtice, for calling of him *Traytor*, *Felon*, and *Robber*; no frivolous cauſe of action. 30. Aſſ. fo. 19.

And I find but three Actions for words brought in 22 years of *E.* 4. and thoſe for one and the ſame words, for publiſhing one to be the *Pilleine* of *I.S.* a ſlander of no ſmall importance neither; for ſo long as that baſe and ſlaviſh Tenure of *Pilleinage* held, he that was a *Pilleine*, was ſubject both in perſon and eſtate to the will of his Lord, ſo that he might ſeize all his eſtate real and perſonal, and vaſſallize his perſon at his pleaſure, ſo that he did not kill or mayim him. 2 E. 4. 5. 15 E. 4. 32. & 33.

In all the one and twenty years of *H.* 7. there is not one action that I can find, brought for ſcandalous words.

And in 38 years of *H.* 8. our Books tell us but of five actions brought for ſcandalous words; two thereof were in 27 H. 8. ſo that I find none before that time neither. The other were in 30 H. 8. and 28 H. *Dyer*, And theſe for no trifling words, for you ſhall find that one of them was for calling a man *Heretike*, another for ſaying a man was perjured; and the other three for calling of one Thief, all of which are high ſcandalls to a mans reputation, and moſt of them tending to the loſs of life and fortunes; ſo that it is very true, that that Reverend Chief Juſtice obſerved, that theſe Actions were very rare in our old books, and ſuch as were brought were for words of eminent ſlander, and of great importance.

27 H. 8. 14. & 22. 30 H. 8. br. action upon the caſe 104. 28 H. 8. Dy. fo. 19. fo. 112. & 5.6.fo.171.

But theſe few have now got ſuch a numerous progeny, that I fear we cannot turn over many leaves in our new books, but we ſhall find one of theſe Actions. They began thus to multiply in the *Queens* time, as we find in my Lord *Cookes* 4. Book, where there is no leſs then 17. adjudged caſes together upon theſe Actions.

And you may eaſily judge, they did not abate in King *Iames* his time; for (if I miſtake not) there is no leſs then two and twenty adjudged caſes upon theſe actions in my LORD *Hobarts* Book.

Pſal. 39. 1, 2. And I am certain they are not fallen in his Majeſties

Majeſties Reign that now is; for I my ſelf have reported no leſs then three and twenty judgments upon theſe actions, but from *Eaſter* Term in the ſixteenth year of the King, to *Trinity* Term in the eighteenth.

Well therefore might *Wray*, *Chief Juſtice*, ſay, that the malice of men doth more increaſe in theſe times, then in times paſt; and he ſaith, the malice of men ought to be withſtood as much as may be; which I am ſure the too frequent tollerating of Actions of this nature will not effect, no more than it can be extinguiſhed by adding fewell unto it. You have heard my advice and direction before, therefore I will here cloſe this with one word, though the tongues of men be ſet on fire, I know no reaſon wherefore the Law ſhould be uſed as Bellowes to blow the Coles.

It is the ſaying of the Prophet *David*, *I will take heed to my ways that I offend not with my tongue, I will keep my mouth as it were with a bridle.* It were happy for all men if they could make the like reſolution and keep it. But ſeeing that we are but men, whilſt we carry this lump of fleſh, and maſs of corruption about us, we ſhall be ſubject to the like paſſions and affections that others have been before us, and the fleſh will rebel againſt the Spirit. And therefore I have provided this Treatiſe upon Actions of Slander, as a Bridle for all raſh & inconſiderate tongues, that ſeeing the miſchief, they may the better know how to avaid it.

And here I ſhall lay down this as a general

rule, which I ſhall by the way as I go, make good in every particuler.

That all ſcandalous words which touch or concern a man in his life, Liberty, or Member, or any corporall puniſhment; or which ſcandall a man in his Office or place of Truſt, or in his Calling or function by which he gaines his living; or which tend to the ſlandering of his Title, or his advancement, or preferment, or any other particular damage; or laſtly which charge a man to have any dangerous infectious diſeaſe, by Reaſon of which he ought to be ſeperated by the Law from the ſociety of men: all ſuch words are actionable.

And firſt for the firſt part of this Rule viz. *Scandalous words which touch or concern a man in his life; ſuch words are actionable.*

30 Aſſ. fol. 19. 27 H. 7. 14. & 21 Cook l. 4. fol. 16. b. Dyer, fol. 36. f. 171. and 236. fol. 26. Woo. Rep. f. 8 Pl. 11. and 247. fol. 196. Cook lib. 4. f. 20.

If a man call another Traitor, Felon, Thief or Murderer, an action lies for theſe words, becauſe they call a mans life in queſtion.

So it is all one if one ſhall ſay of another that he killed or murdered I. S. or that he ſtole his goods, or that he poyſoned him, if it appear to be intended to be wittingly done, or the like, theſe words likewiſe are Actionable, as appears by the Books in the margent.

So if one ſhall ſay of another he hath burnt my Barn with Corn, which is Felony, this likewiſe will bear an Action.

I have a report of a caſe in which was thus: a Servant of one Mr. *Roger Brook* ſaid of one Mrs. *Margaret Paſſey* that ſhe ſent a Letter to his Maſter, and in the ſaid letter willed his Maſter to poyſon his Wife *Bridget Brook*, and in this caſe

caſe it is ſaid that upon a Writ of Error brought in the Exchequer Chamber it was reſolved, the words were actionable, and the judgment affirmed, which caſe I confeſs I much doubt, becauſe here was but bare advice and nothing appearing to be done like *Eatons* caſe in *Cokes* 4 Book. Cook. l. 4. f. 16. b.

Where the Defendant ſaid of the Plaintiff, that *He gave his Champion Counſell to make a Deed* of gift of his goods to kill him, *&c.* adjudged that the words were not actionable, becauſe that the purpoſe or intent of a man without act, is not puniſhable by the Law.

And I conceive it will not be like the caſe put by *Tanfield Juſt.* in *Harris* and *Hixons* caſe, where he ſaith that to ſay of another, that he lay in wait to Rob for to murder *J. S.* will bear an Action, becauſe that he accuſes him of an act; *viz.* The preparation and lying in wait, which is puniſhable by the Law; but in the former caſe there is nothing but bare advice, which is not puniſhable by the Law. Paſc. 5. Jac. in the Kings Bench.

Hawly brought an Action upon the caſe againſt *Sydnam* for theſe words, he is infected of the Robbery and Murder lately committed, and ſmels of the murder, adjudged that the words were actionable, by reaſon of the word infected. Mich 4 5. Eliz. Dyer, f. 3[illegible] 8.

One ſaid of another, thou diddeſt kill a Woman great with Childe, *innuendo jocoſam Uxorem cujuſdam R. S. defunct.* and ruled by the Court that the Action would lie, though that the woman were utterly incertain, be- Mich. [illegible] Jac. in the King's Bench.

cauſe

cauſe that the offence and the party intended to commit it, is certain; and 'tis not like the caſe, where one ſaid, that there is one in this company, who hath committed a murder; there it is incertain of whom the words were ſpoken, and cannot poſſibly be ayded by an *innuendo*; but here the words are actionable without an *innuendo*; but *quære*, whether the Action would lie or no, becauſe there is no expreſs Averment that the Woman was dead, for the *innuendo* will not be ſufficient.

Paſch. 1. Jac. in B. R. Rot. 107.

Haſlewood brought an Action againſt *Garret* for theſe words, (amongſt others agreed not to be actionable) Whoſoever is he that is falſeſt Thief, and ſtrongeſt in the County of *Salop*, whatſoever he hath ſtollen, or whatſoever he hath done, *Thomas Haſlewood* is falſer then he, Reſolved that theſe words are actionable, with an averment that there are Felons within the County of *Salop*; but for default of ſuch averment, the Judgment being given in the Common Pleas was reverſed in this Court.

Averment.

Paſc. 5 Jac. in the Kings Bench.

Stoner brought an Action for words againſt *Gambel*, and declares, that the Defendant *dixit deprefato* the plaintiff thou *innuendo*, &c. haſt ſtollen my Goods; and upon not guilty pleaded, the Jury found for the plaintiff, and in arreſt of judgment it was ſaid, that the Count was nought, for the words are in the ſecond perſon, and it is not alleadged that the Plaintiff was preſent at the ſpeaking of them. *Et tota Curia contra*, for *dixit de prefato*,

Words in the ſecond perſon, though the party be not preſent, actionable.

fato, is as much as *Dixit ad prefatum*, for cannot he ſay thou haſt, of the Plaintiff, except that it were ſpoken to him? and rule was given for Judgment.

One *Yeomans* ſaid of *Hext*, I do not doubt but within two daies to Arreſt *Hext* for ſuſpition of *Fellony*; adjudged that the words were actionable, becauſe that for ſuſpition of Felony, hee ſhall be impriſoned, and his life drawn in queſtion, Cook l. 4. 15.

Hill. 20. *Jac.* in the Kings Bench, *Winch* came to the Barr and ſhewed a Libell againſt another in Court Chriſtian for theſe words, Thou art a Witch, and dealeſt with Witchery, and diddeſt procure Mother *Bale* to witch the Cattel of *I. S.* and upon this prayed a prohibition, becauſe that the Plaintiff had remedy at Law; and by *Fenner* and *Gawdy Juſtices*, (the others abſent) prohibition lies, becauſe ſhe hath remedy at Law. So that their opinion was, that an action would lie at the Common Law for calling of one *Witch*.

And in one *Edwards* his caſe, *Hill.* 4. *Jac.* it was ſaid to have been three times adjudged, that to call one *Witch* would bear an action, and alſo that an action would lie for calling of one *Hag*; but I doubt of the latter, becauſe I take *Hag* to be a doubtfull word. But why *Witch* ſhould not bear an action, I know no reaſon, being the life may be thereby drawn in queſtion, though I know it hath been doubted. Hil. 4. Jac. in the Kings Bench. Hob. Rep. p. 155.

Marſhall brought an action againſt *Steward* for

for saying the Devil appears to thee every night in the likeneſs of a blackman riding upon a black Horſe, and thou conferreſt with him, and whatſoever thou doſt ask he gives it thee, and that is the reaſon thou haſt ſo much money, adjudged the words were actionable. Note *Reader*, that by the Statute of 10 of King *James*, *cap*, 21. Conjuration or Conſultation with the Divell is Felony.

Mich. 17. Car. in the Kings Bench.

In the caſe of *Hawes*, *Mich.* 17. of the King that now is, this caſe was put and agreed by the judges, one ſaid of another that he had received a *Romiſh Prieſt*, adjudged actionable, becauſe it is Felony, he might receive a Romiſh Prieſt and yet not know him to be ſo, (like the caſes I have put you afterwards) therefore *Quære.*

Hob. Rep. p. 151.

Sir *John Sydenham* againſt *Timothy Man*, *Clerk*; I think in my conſcience that if Sir *John Sydenham* might have his will, he would kill all the Subjects in *England*, and the King too, and he is a maintainer of *Papiſtry* and *Rebellious perſons*. Theſe words upon a writ of Error in the Exchequer Chamber were adjudged actionable.

See fo. 32. b.

It ſeems ſomewhat hard to me *Reader*, that words of thought or opinion only ſhould bear an Action, as here in the former words. And for the latter words, that he is a maintainer of *Rebellious Perſons*; they are adjective only, and do not import any Act of rebellion in theſe Perſons, but only an inclination to it, but of this more hereafter.

Cook lib. 4. fo. 19. 2. b.

If a man ſay of another, that he doth like or approve of thoſe that maintain ſedition againſt the King; I conceive that theſe words are actionable, and ſedition is a violent and publike thing of which he cannot but give notice. Cook. l. 4. fol. 13.

This rule was agreed by the Judges in the debate of a caſe in the Kings Bench, that many words (though of themſelves they be not actionable) yet being equivalent to words that are actionable, will bear an Action. Paſch. 15. Car. in the Kings Bench.

And it was ſaid by *Iones Juſtice*, that in Yorkſhire ſtrayning of a *Mare*, is all one with Buggering of a Mare, and therefore he ſaid that an Action will lie for theſe words, with an averment that they tantamount to Buggering of a Mare. Note by this opinion in ſuch caſe there muſt be an averment of the meaning or importance of the words. Averment.

Yet my Lord *Hobart* hath ſeverall caſes adjudged, where a man brought an action for *Welch* words, and did not aver what the words did import in Engliſh, and yet judgment was given for the Plaintiff, and the Court took information upon Oath by *Welchmen* what the words meant in Engliſh. Hob. Rep. pa. 165. &. 268. pl. 236. Gibs and Ginkins caſe, averment.

And in one of the caſes Serjeant *John Moore* then informed the Court that judgment had been given in the Kings Bench in the caſe of *Tucker* upon theſe words *Thou art a healer of Fellons*, without any averment, how the words were taken; becauſe the Court was informed and took knowledge that in ſome Coun- 6 Jac. in the Kings Bench.

Counties it was taken for ſmotherer of Fellons.

Paſch. 7. Jac in the Kings Bench.

The caſe intended by Serjeant *Moore*, was I conceive the caſe of *Pridham* and *Tucker* in the Kings Bench, where the words were adjudged actionable without an averment; and in this caſe it was agreed, that words may be ſlanderous in one County and not in another; for in *Norf.* they know not what [*healer*] ſignifieth; but this being in *Devonſhire* where this word is uſed for concealer of Theeves, will be actionable.

Words ſlandrous in one County & not in another.

And I take this to be generally true, that in all caſes where a mans life may be drawn in queſtion by ſcandalous words, that ſuch words are actionable.

And now I ſhall cite a caſe or two, *where words ſpoken which touch a mans life, which are by way of interrogation, or by way of hearſay or relation; or laſtly by way of negation only, and yet will bear an Action.*

Paſch. 15. Car. words ſpoke by way of interrogation.

It was ſaid at the Kings Bench Bar [which I heard and obſerved,] that it had been adjudged in this Court in one *Appletons* caſe, that where a man ſaid to another, Where is my *peece* thou ſtolleſt from me? that theſe words were Actionable.

And *Jones*, *Juſtice*, then ſaid, that he remembred this caſe to be adjudged. *A.* ſaid that *B.* told him that *C.* ſtole a Horſe, but he did not believe him; that theſe words, with an averment that *B.* did not ſay any ſuch thing to *A.* were actionable.

Agree-

Agreeing with this caſe is the Lady *Morriſons* caſe Widdow, who brought an action for words againſt *William Cade* Eſquire, and declares that ſhe was of good fame, &c. and that *Henry* Earl of *Kent* was in ſpeech and communication with her concerning Marriage, the Defendant *premiſſorum non ignarus*, ſaid theſe words, *Arſcot* hath reported that he hath had the uſe of the Lady *Morriſons* body at his pleaſure; *ubirevera*, *Arſcot* did never report it, and alledges that the Earl of *Kent* upon the hearing of theſe words ſurceaſed his ſuit, by which ſhe loſt her advancement, &c. adjudged that the words were Actionable, though ſpoken upon the report of another; for otherwiſe a Man might maliciouſly raiſe ſlanderous reports of another, and ſhould never be puniſhed for it. Hill. 41. Jac. in the Kings Bench. Rot. 1.

But in this caſe *Tanfield*, *Juſtice*, ſaid, that if it had been expreſly alleadged, that in truth it was ſo reported by *Arſcot*, then an Action would not lye againſt *Cade* for ſaying that *Arſcot* reported it, becauſe it is true that he did ſo.

And *Bartley*, *Juſtice*, ſaid, that an action had been brought for theſe words, *You are no Thief.* In which there was an averment, which implyed an affirmative, and agreed to be Actionable; and *Appletons* caſe was then agreed for Law. Paſch. 15. Car. negative words actionable. Mich. 15. Car. in the Kings Bench

A. ſaid to If. *haſt thou been at* London *to change the money thou ſtoleſt from me?* In this caſe it was objected, that theſe words were Words of Interrogation.

not

not actionable, becauſe that they are ſpoken only by way of interrogatiou, and are no direct affirmative. But *Jones and Bartley, Juſtices*, (the others being abſent) both ſaid that the words were actionable; for the firſt words, *Haſt thou been at London, &c.* are the only words of interrogation, and the ſubſequent words, viz. *The money thou ſtolleſt from me*, is a poſitive affirmation; and *Bartley Juſt.* then ſaid, that it hath been often times adjudged that words of interrogation ſhould be taken as a direct affirmation, which *Jones Juſt.* alſo agreed, and farther ſaid that this caſe had been adjudged.

I dreamt you ſtole a horſe, actionable.

One ſaid to another, I dreamt this night, that you ſtole a horſe, theſe words were adjudged actionable: And he ſaid, that if theſe and the like words ſhould not bear an Action, a man might be as abuſive as he pleaſed, and by ſuch ſubtill words as theſe, alwayes avoid an action. And now I will put you a caſe or two, *where words which imply an affirmative ſhall be actionable.*

Paſch. 15. Car. in the Kings Bench.

One ſaid of another, he would prove he had ſtollen his Books. In this caſe the opinion of the Court was that the words were actionable, becauſe they imply an affiamative; and are as much as if he had ſtollen his Books. And ſo if I will ſay of another, that I will bring him before a Juſtice of Peace, for I will prove that he hath ſtolen &c. though the firſt words are not actionable, yet the laſt are.

Whitacres

Whitacres brought an action against *Lavington* for these words, I will prove that *Whitacre* is forsworn, and that ten men can justifie, and I could prove him perjured if I would, adjudged that the words were actionable, for that it is a great slander to be reported, that it is in the power of any one to prove one perjured, and it is a direct affirmance. Pasch 5. Jac. in the Kings Bench.

It will be proved by many vehement presumptions, that *Welby* was a plotter and contriver of *Thomas Powels* death, because he would not sell his Land to the said *Welby*, adjudged the words were actionable. Pasch. 7. Jac. in the Kings Bench.

And now I have shewn you the affirmative part, where words which touch or concern a mans life, shall be actionable; I shall now shew unto you the negative part, where words in such case shall not be actionable.

Words that touch or concern a mans life may not be actionable in these cases, where they are too general, or not positively affirmative, or of a double or indifferent meaning. or doubtfull in sense; or for that they are incertain in themselves, or the person of whom they are spoken, or else by reason of the subsequent qualification of the words, because they do not import an act, but an intent, or inclination only to it, or for that they are impossible, or lastly, because it doth appear that the speaking of them could be no dammage to the Plaintiff, in all these cases the words will not be actionable.

And first, words that are too generall, or not

possitively affirmative, will not be Actionable.

Mich. 4. Jac. in the Kings Bench.

To say of a man, that he deserves to be hanged; adjudged not actionable, because they are too generall, for that hee doth not shew any thing that hee hath done to deserve it: and by *Yelverton*, *Justice*, he may deserve it for unnaturall using of his parents, and the like, where he shall not be punished by the Law.

Coke. lib. 4. *f.* 15. *b. Yeomans* and *Hexts* case, For my ground in *Allerton*, *Hexts seeks my life*; adjudged not actionable, because seeking his life is too generall, for which there is no punishment.

Pasch. 7. Jac. in the King Ben h.

So if I say of another, that it is in my power to hang h m; adjudged not actionable, in *Pridham* and *Tuckers* case cited before, because the words are too generall.

Hob. r p. 47. p. 19[illegible].

James Steward brought an action against *Bishop*, for saying of him, that he was in *Warwick* Goale for stealing of a Mare and other Beasts, and adjudged, that the words would not bear an action, because they do affirm directly that he did steal them; as if he had said that he stole them, and was in Goal for it, but only make report of his imprisonment, and the supposed reason of it, and it may very well be, that the Warrant of *Mittimus* was for stealing expresly, as is the common form of making of the Kalender of the Prisoners for the Justices of Assise, and the like.

George Bland brought an Action against

A. B.

A. B. for saying that he was indicted for Fellony at such a Sessions; it was said, that it was questioned, whether an action would lie, because an Indictment is but a surmise. But I conceive that it is without question, that no action will lie in such case; because that to say a man was indicted of Fellony, is no more than to say he was impeached or accused for Felony, which an honest man may be, & is no positive affirmation that he had committed Felony, and so it hath been often adjudged; I will only cite one case in the point. Hob. Rep. pa. 309. pl. 289.

Hasselwood brought an action against *Garret*, for these words, *I can find in this Parish, a falser knave than* Briscoe *is, the which* Briscoe *is indicted of Fellony and burglary, and is gone to* Stafford *Goale, and that false knave is* Thomas Hasselwood, *&c.* it was adjudged that these words are not actionable, because that *Briscoe* might be indicted, and yet be an honest man. Pasch. 1. Jac. in the Kings Bench. Rot 107.

Thou hast lain in Fullers Tubbs, in which none come, but those that have the Pox, adjudged the words were not actionable, because this is no direct affirmation that the Plaintiff had the Pox. 37 Eliz. Chappal and Burroughs case.

Poland brought an Action against Mason, for saying, I charge him (meaning the Plaintiff) *with Felony, &c.* adjudged the words were not actionable, because that he doth not affirm that he is a Felon, but doth only say, that he doth charge him with Felony, which he may do in some cases, though he did not the fact; as if a Felony were done, and the com- Hob rep. p. 425. pl. 381.

mon fame were, that he did it, any one that ſuſpects him may charge him with it.

Hob. rep. p. 308. pl. 286. *Henry* brought an Action againſt *Fitch* for theſe words; *I arreſt you for Felony*; agreed that the words were not actionable, for this is no poſitive charge that he was a Felon, and this may be lawfully done upon a common fame as is ſaid before, thus you ſee that words that are not directly affirmative will not bear an action.

Yet you may ſee before, where words which imply an affirmative onely ſhall be actionable, as to ſay, that I will prove that you ſtole my Books, or the like, but of this ſufficient.

fol. 10. b. & 11. Secondly, *Words that are of a double or indifferent meaning, the Law will take them in the beſt ſenſe for the ſpeaker, and ſo adjudge them actionable, for the rule of Law is* (as I have ſaid before) *that verba accipienda ſunt in mitiori ſenſu.*

Coke l. 4. fol. 15. b. *Yeomans and Hexts caſe cited before, for my land in Allerton, Hext ſeeks my life, &c.* adjudged theſe words were not actionable, becauſe he may ſeek his life lawfully upon juſt cauſe, and his Land may be ſtolen of him, and ſo in *mitiori ſenſu.*

Coke. l. 4. fol. 20. 4. *Barham* brought an action upon the caſe againſt *Netherſall* and the words were, Maſter *Barham did burn my Barn* (*innuendo a barn with Corn*) *with his own hands, and none but he*: and after verdict, it was moved in arreſt of judgment, that the words were not actionable; for

for it is not Felony to burn a Barn if it be not parcel of a Manſion houſe, nor full of Corn: And in ſuch caſe *agiter civiliter*, and not *criminaliter*, and words muſt be taken in *mitiori ſenſu*, and the *innuendo* will not ſerve when the words themſelves, are not ſlanderous.

James his caſe, *hang him he is full of the Pox, I marvail that you will eat or drink with him &c.* adjudged that the words were not actionable, becauſe they ſhall be taken *in mitiori ſenſu*, for the ſmall Pox, and not the French Pox. Coke. l. 4. fol. 17.

But note that in *Hawtry* and *Miles* caſe cited afterwards, it was ſaid by *Fenner*, *Juſt.* that to ſay, that a man is laid of the Pox, will bear an Action; becauſe that is the phraſe for the French Pox. Mich. 20. Jac. in the Kings Bench.

Adrian Coote brought an Action againſt *Adrian Gilbert* for theſe words; *Thou art a Thiefe, and haſt ſtollen a Tree*, adjudged that the words were not actionable, and agreed that there is no difference between, *and thou haſt ſtollen, and for thou haſt ſtollen*; for in common acceptation (and) is to be underſtood to be but a verifying and making good of the generall word (*Theefe*) and then a Tree ſhall be underſtood rather of a Tree ſtanding, than felled; which can be no Felony or Theft; for that a man cannot ſteal a mans inheritance. Hob. rep. p. 106. pl. 971.

So *Clark* brought an Action againſt *Gilbert*, for theſe words; *Thou art a Theefe and haſt ſtollen twenty load of my Furz*, adjudged that Hob. rep. P. 473. pl. 406.

the Action would not lie for the reaſons given in the former caſe.

Coke. lib. 10. 19. b. The like Law is, if a man ſay of another that he hath ſtollen his Apples, or his Corn, or robbed his Hop Ground, or the like, the Law in theſe caſes will adjudge them rather growing, than gathered or cut down, and ſo the words not actionable.

Thus it is evident, that where the words may be taken in a double or an indifferent meaning, that the Law will ever take them beſt for the Speaker. I ſhall onely put one caſe more upon this ground, and ſo paſs it over.

Trin 18. Car. in the Kings Bench. *Pawlin* brought an action againſt *Ford* for theſe words, Thou art a Theeviſh rogue, and haſt ſtollen my Wood. It was in this caſe ſaid at Barr, the Action would not lie, becauſe it ſhould be conſtrued rather to be wood ſtanding than cut down, like thoſe caſes put before.

But *Bramſton, Chief Juſtice*, ſeemed to incline, that the words were actionable, becauſe that (Wood) cannot be otherwiſe intended than of Wood cut down, according to the old verſe, *Arbor dum creſcit, lignum dum creſcere noſcit*, and ſo it was adjourned without more ſaying.

Trin. 4. Jac. in the Kings Bench. Rot. 13 66. Note *Reader*, according to the opinion of *Bramſton Chief Juſtice*, betwixt *Litchfield* and *Saunders* for the ſame words, he hath ſtolen my wood, to which the defendant demurred, it was adjudged that the action would lie

lie; for *Tanfield*, *Juſtice*, ſaid, that the words ſhall be intended according to the moſt uſuall ſenſe, *viz.* That it was *Lignum* and not *Arbor*; as if one ſay, that the Plaintiff hath committed a murder, it ſhall not be intended that he hath murdered a Hare, but a man.

Words muſt be taken according to common intent.

You may here obſerve (Reader) *that though the words of a double or indifferent meaning ought to be taken in the beſt intendment for the ſpeaker, as I have ſufficiently declared it unto you, yet they ought not to be taken contrary to common intendment.*

For as you ſhall not ſtrain words to an intent not apparent, to make them actionable, ſo you muſt not reſt them contrary to common intent to make them not actionable; this is apparent by *Sanders* his caſe immediately before, where it is adjudged, that to ſay of another you have ſtolen my wood, ſhall be intended to be *Lignum*, and not *Arbor*, and ſo actionable; to ſay of a man that he hath committed a murder, ſhall not be underſtood murdering of a Hare, but a Man.

Dame *Morriſon* brought an action againſt *William Cade* Eſquire, and declared that ſhe was of good fame, *&c.* and that *Henry* Earl of *Kent* was in ſpeech and communication with her for marriage, the defendant *premiſſorum non ignarus*, ſaid theſe words, *Arſcot* hath reported that he hath had the uſe of the Lady *Morriſons* Body at his pleaſure; *ubirevera*, *Arſcot* never reported it. And further alledges, that the E. of *Kent* upon the hearing of theſe words ſurceaſed his ſuit, by which ſhe

Hill. 4. Jac. in d' Kings Bench. Rot 1153.

loſt her advancement, the Defendant pleaded not guilty, and it was found for the Plaintiff. It was moved by *Hobert Attorney General* that the words were not Actionable, for this reaſon (amongſt others all ruled againſt him) becauſe that the words, *Had the uſe of her Body*, were incertain and of a double intendment, and therefore ſhould bee taken in the beſt ſenſe, to have the uſe of her Body, as a Taylor in meaſuring, or a Phyſitian in giving Phyſick or the like, and not in any worſe ſenſe.

Words taken according unto common intent.

But by *Popham*, *Chief Juſtice*, the words are actionable, when words are ſpoken that may have a double intent or meaning, they ſhall be expounded according to common intent, for otherwiſe, he which intends to ſlander another, may ſpeak ſlanderous words, which by common intendment ſhall be expounded a ſlander, and yet no Action lie. And here the words, hath had the uſe of her Body at his pleaſure, ſhall not be intended in any lawfull manner, but licentiouſly, and diſhoneſtly; for this is the common intent, with whom all the other Juſtices agreed.

Mich. 15. Eliz. Dyer, f. 317. pl. 8.

Thirdly, where the words are doubtful in ſenſe or meaning, there likewiſe they will not be actionable.

Hob. rep. p 350. pl. 323.

To ſay that a man ſmels of a murder lately committed, will not bear an action, becauſe the words are of a dubious ſenſe and intendment.

Coke. l. 4. fol. 15. b.

Bradſhaw brought an action againſt *Walker* for

for theſe words, thou art a filching fellow, and diddeſt filch from *William Parſon* a 100.l. adjudged the words were not actionable, becauſe that they are of incertain ſenſe and meaning.

So to call one Harlot, will not bear an action. And upon this ground, I conceive (as I have ſaid before) that to call a Woman *Higge*, will not be actionable. Coke lib. 4. 15. b.

So, to ſay of a man that he is a *Healer* of *Felons*, or that he ſtrained a Mare, as the caſes are before put; will not be actionable, becauſe of their doubtful ſenſe and meaning, without the words bee ſpoken to ſuch who knows the meaning and intendment of them.

Fourthly, where the words themſelves are uncertaine, or the perſons of whom they are ſpoken, in ſuch caſe they will not be actionable.

And firſt, for the uncertainty of the words, that is, when the ſcandall is not certaine and apparent in the words themſelves.

Note *Reader*, that all the caſes put before upon the double or indifferent meaning of words are apt to this purpoſe; As thoſe, Thou haſt ſtollen my Apples, or my Corn, or ſo many load of my Furzes, or a Tree, or the like, the words in theſe caſes are not actionable, becauſe the ſcandall is not apparent, and certain by the words; for in every of theſe caſes (for ought appeares by the words) the thing ſaid to bee ſtollen might be growing, and then it is a treſpaſs onely and

no

no felony, and to charge a man with a treſpaſs, will not be actionable.

But if the words were, thou haſt ſtollen my Apples out of my Loft, my Corn out of my Barn, or my Furz or Wood out of my Yard, in ſuch caſe the words would be actionable, becauſe the ſcandall is apparent, for that it is evident by the words, they were not growing.

Hob. Rep. pag. 8. pl. 11. *Edward Miles* brought an Action againſt *Francis Jacob*, for theſe words, thou haſt poyſoned *Smith*, &c. upon a Writ of Error in the Exchequer Chamber, it was adjudged, that the Action would not lie, becauſe it did not appear by the words, that it was done wittingly.

Hob. rep. p. 268. pl. 336. *Gibs*, and *Jenkins* caſe; to ſay of a man, that he bore away money, or the like, will not be actionable.

Mich. 15. Car in. the Kings Bench. *A.* ſaid of *B.* that he took away money from him with a ſtrong hand, for which, *B.* brought an action; adjudged that it would not lie.

Bramſtone, Chief Juſtice, in the arguing of *Hawes* Caſe, *Mich.* 17. of this King in the Kings Bench, remembred this caſe, He did aſſault me, and took away my purſe from me; and he ſaid that it was adjudged, that the words were not actionable: The reaſon of theſe caſes, is, becauſe that for ought appears by the words (which are of themſelves uncertain) theſe might be Treſpaſſes onely, and no Felony.

37 Eliz. in the Common Pleas.

Again

Again, where the perſon ſcandalized is uncertain, no action will lie.

If one ſay (without any precedent communication of any perſon incertain) that one of the Servants of *B.* (hee having divers) is a notorious Felon or Traytor, &c. here for the incertainty of the perſon no action lyes; neither can it be made good by an (*innuendo.*) Coke. lib. 4. fo. 17. b.

So, if one ſay generally, I know one neer about *B.* that is a notorious theif, or the like, no action will lie, for the ſame reaſon. Coke. ibid.

So as it is in *Fleetwoods* caſe in *Hobarts* Reports; if a man ſay, looking upon three perſons, one of theſe murdered a man; no action will lie for theſe words, by reaſon of the incertainty of the perſon, neither can an *innuendo*, help the incertainty; and Note *Reader*, that theſe Caſes are not like *Wiſemans* Caſe. Hob. Rep. pa. 375. pl. 351.

Wiſeman of *Grayes-Inne*, brought an Action againſt *Wiſeman* of *Lincolns-Inn* his Brother, for theſe words, my Brother (meaning the Plaintiff) is perjured, and I will juſtifie it; upon not guilty pleaded, it was found for the Plaintiff, and it was moved in arreſt of judgment, that the words were not certain enough to ground an Action upon, becauſe the Plaintiff might have more Brothers, and it doth not appear of which of them the words were ſpoken; but it was reſolved that the action would well lie, becauſe it is alledged that they were ſpoken of the Plaintiff, and Mich. 3. in the Kings Bench.

and the Jury have found accordingly; and here *Tanfield* Juſtice, took his difference; where the words themſelves are incertain, as to ſay, one of my Brothers is periured, there they can never be made good by an averment, but where the words are certain, in themſelves, ſo that it may appear that the Speaker intended a perſon certain, there they may be made certain by ſuch a Declaration, and the finding of the Jury.

And it was ſaid, that if it were true, that there were divers Brothers the Defendant ſhould have pleaded it, and then iſſue ſhould have been taken, whether the words were ſpoken of the Plaintiff or no.

Mich. 2. Jac. in the Kings Bench.

Nor are the former caſes, like a caſe which I cited before, *Mich.* 2. *Jac.* where an action was brought for theſe words: thou diddeſt kill a Woman great with Child, (*innuendo*, *Jocoſam Uxorem cujuſdam R. S. defuncti.*) where it was ruled that though the Woman was utterly incertain, yet becauſe the Offence and the party intended to commit it were certain, the action would well lie,

Hob. Rep. pa. 122. pl. 118.

Foxcroft brought an action againſt *Lacy*, and declared that a communication was moved between *John Walter*, and *Richard Guyn* Eſquires, concerning a certain ſuit, wherein the Plaintiff and certain others were Defendants, and that the Defendant *Lacy* upon the ſaid Communication in their preſence ſpake theſe words: theſe Defendants (meaning the plaintiff, and the others) are thoſe that

Words certain by relation.

that helped to murder *Henry Farrar* (meaning one *Henry Farrar* deceaſed) who was murdered by one *T. Gulſield*, who was hang'd for it, adjudged the words were actionable, and that they were as ſufficiently laid to intitle every of the Defendants to a ſeverall Action, as if they had been ſpecially named, here you ſee the words may be ſufficiently certain by relation.

Fifthly, *where former words actionable are qualified with ſubſequent words not Actionable, there though the former words ſpoken generally, and by themſelves would have maintained an Action, yet now, taken altogether, they will not be Actionable.*

Thou art a Theef, for thou haſt ſtollen my Apples out of my Orchard; or, for thou haſt robbed my Hop-ground; or, for thou haſt ſtollen a Tree; or, for thou haſt ſtollen my Furzes; as I have put you the Caſes before. Or, Thou art a Theef, and thou haſt ſtollen my Apples out of my Orchard; or, and thou haſt robbed my Hop-ground, &c. (*and*) and (*for*) have both one and the ſame ſignification in theſe caſes, as I have cleared to you before to be adjudged; And in all theſe caſes no Action will lie.

For (as I have ſaid before) the latter words do qualifie the former, for the former words ſay him to be a Theef, but the latter prove him to be none. I have given the reaſon before, becauſe that in all theſe caſes, the Law which will alwaies conſtrue words the beſt

for

for the Speaker, will take the Apples, Hops, &c. to be growing, and then it is Treſpaſs only and not Felony to take them away; becauſe Felony, as I have told you before, cannot be committed of that which is parcel of a mans inheritance, as theſe are whilſt they are growing.

Coke lib. 4. fo. 19. 2. b. *Britteridge* brought an Action for theſe words; *Britteridge* is a perjured old Knave, and that is to be proved by a Stake parting the Land of *H. Martin*, and *M. Wright*; adjudged that the words are not Actionable, becauſe though the former words would bear an Action, the latter do ſo qualifie and extenuate them, that taking all together they are not Actionable, for the latter words do explain his intent, That he did not intend any Judicial perjury; alſo it was impoſſible that a Stake could prove him perjured, and therefore for the impoſſibility, and inſenſibility of the words, the Action would not lie.

Sixthly, *Where the words do not import an act, but an intent only, or an inclination to it, there ſuch words (except where they ſcandal a man in his Function or Profeſſion) will not bear an Action.*

Coke lib. 4. fo. 19. 2. b. If a man ſay of another, That he is a Seditious Knave, or a Theeviſh Knave, or a Trayterous Knave; Theſe words will not bear an Action, becauſe that the words do not import that he hath done, or is guilty of Sedition, Felony, or Treaſon, but are Adjective words, which import an inclination to it only.

But

But if a man ſay of another, That he is a Perjured Knave, an Action will lie for theſe words, becauſe that the Adjective *(perjured)* preſumeth an Act committed, or otherwiſe he cannot be perjured.

Beſides, Adjective words will bear an Action, when they ſcandal a man in his Office, Function or Trade, by which he doth acquire his living, though they do not import an act done. Coke ibid.

My Lord *Coke* cites this Caſe adjudged 24 *Eliz.* between *Phillips* Parſon of *D.* and *Badby*, in an Action brought for theſe words, *Thou haſt made a Seditious Sermon, and moved the people to Sedition this day*; Reſolved, That the words were actionable, notwithſtanding that the firſt part of the words were utter adjective, and the laſt words were but a motive to ſedition, and it doth not appear that any thing enſued; yet becauſe that they ſcandal the Plaintiff in his Function, they were adjudged actionable.

So, if a man ſay of a Merchant, That he is a Bankruptly Knave, or a Bankrupt Knave; Theſe words will bear an Action, though that the Bankrupt be adjective. Mich. 42 & 43 Eliz. in the Common Pleas. Mittons Caſe.

Or if one ſay of a Merchant, *That he will be Bankrupt within two dayes*, which imports but an inclination, yet an Action will lye: for theſe ſcandals reach to the profeſſion. 6 E. 6. Dyer f. 72.

So, if a man ſay of an Officer or Judge, *That he is a corrupt Officer or Judge*, though the words be adjective, yet an Action lyeth for Coke lib. fo 16. a. 19. a.

both

both causes; first, because the words touch him in his Office, and then because they do import an act done.

*Hob. Rep. pag.*12. *pl.*17. *Yardly* and *Ellils* Case, to say of an Attorney, *That he is a bribing Knave*, will bear an Action, though the words be adjective.

Words likewise that import an intent only, will not bear an Action.

Coke lib.4. fo. 16. b. Eaton's Case

The Defendant said of the Plaintiff, *For he is a Brabler and a Quarreller, he gave his Champion counsel to make a deed of gift of his goods to kill me*, &c. *but God preserved me*; The Book saith, that it was strongly urged, That the Action should be maintainable; and divers Cases cited, which I will remember unto you.

Mich. 32 & 33 Eliz. in the Kings-Bench.

My Lady *Cockeins* Case for these words; *My Lady* Cockein *offered to give poyson to one to kill the Child in her body.*

Another betwixt *Tibots* and *Heyre* in *Glouceſter* for these words, *Tibots and another did agree to hire one to kill* B.

Also *Cardinals* Case for these words, *If I had consented to Master* Cardinal, T. H. *had not been alive.*

And the Lord *Lumley*'s Case; *My Lord* Lumley *hath gone about to take away my life, against all Christian dealing.*

But notwithstanding these cases, the Book saith, That upon great deliberation and advisement, it was adjudged, That in the principal case the words were not actionable, because that the purpose or intent of a man without

without act, is not puniſhable by the Law. My Lord *Coke* in the cloſe of this caſe, ſayes, *Note well this Caſe, and the Cauſe, and Reaſon of the Judgment.*

Certainly, *Reader*, there is ſomewhat more than ordinary in this (*Nota bene*) of my Lord *Cokes*; and the reaſon of the Caſe ſeems to intimate as much unto us: which is, That the purpoſe or intent of a man without act, is not puniſhable by the Law; which is a certain truth.

But I conceive it is as true, That where that purpoſe or intent is manifeſted by an overt-act or attempt, that that is puniſhable.

Mich. 4. of King *James*, in a Caſe in the Kings-Bench, this was agreed for Law, to ſay of a man, That he lay in wait to aſſault *J.S.* with an intent to rob him, or to murder him, an Action lyes, becauſe that he doth accuſe him of an act, *viz.* the preparation, and lying in wait to aſſault him; but if he had ſaid that he would have murdered, or would have robbed *J.S.* an Action would not lie, becauſe he only gueſſes at his imagination. Mich. 4. Jac. in the Kings Bench.

And in *Harris* and *Dixons* Caſe in the Kings Bench, that Caſe was allowed for Law by *Tanfield*, Juſtice, where he ſaid, That if one ſay of another, That he lay in wait to murder *J.S.* an Action lyes, becauſe ſuch lying in wait is puniſhable by the Law. Paſc. 5. Jac. in the Kings Bench.

By this caſe it ſhould ſeem, that to charge a man with an attempt only to commit Felony, as to ſay of a man that he offered to rob, or

to poyſon, or to murder *J.S.* that theſe ſhould be actionable, for I think the like puniſhment is in theſe caſes, as in the former, which I conceive is only the good behaviour, or at moſt indictable for it, and thereupon fined.

And if an Action ſhould lye in ſuch caſe, by the ſame reaſon to ſay of a man, that he is a common Quarreller, breaker, or perturber of the Peace, or that he is a Rioter, or the like, would bear an Action, becauſe that for theſe likewiſe the good behaviour is grantable, and likewiſe a man may be indicted for them; Therefore *quære* of the former Caſes.

Seventhly, Words which are apparently impoſſible, will not be Actionable.

Paſch. 5. Jac. in the Kings-Bench.

Benſon brought an Action againſt *Morley* for theſe words; *Thou haſt robbed the Church (innuendo Eccleſiam Sancti Alhagi extra Cripplegate London) and haſt ſtollen the Lead of the Church*; upon not guilty pleaded, it was found for the Plaintiff; And it was moved in Arreſt of Judgment, That the words were not actionable, becauſe the Church ſhall be intended the Univerſal Church, and not any material Church; and the Church Militant cannot be robbed, and ſo the words are impoſſible: but by *Popham*, Chief Juſtice, and *Tanfield*, Juſtice, The Action will well lie; and ſo it was adjudged, becauſe the words in this caſe cannot be intended of an inviſible Church, as is objected, but of a material Church, as is explained by the ſubſequent words, *and haſt ſtollen the Lead of the Church*: which cannot be underſtood of the inviſible Church. In

In this Case, *Reader*, you may observe that it is admitted, that to say of a man, *That he hath robbed the Church*, generally will not be actionable; because that it shall be understood of the invisible Universal Church, and so the words impossible, because that cannot be robbed.

So I conceive to say of a man, that he hath robbed a Church, will be actionable, because this must of necessity be understood of some particular material Church.

Dickes a Brewer brought an Action against *Fenne*, for these words; *I will give a peck of Mault to my Mare, and lead her to the water to drink, and she shall piss as good Beer as* Dickes *doth brew*; adjudged the words were not actionable, because impossible, and therefore they could be no scandal to the Plaintiff. Mich. 15. Car. in the Kings-Bench.

Britteridge brought an Action for these words; *Britteridge is a perjured old Knave, and that is to be proved by a stake parting the Land of* H. Martin, *and* M. Wright; adjudged the words were not actionable, because that it was impossible that a stake could prove him perjured. Coke. l. 4. f. 19. a.b.

Lastly, Where it doth appear that the speaking of the words could be no damage to the Plaintiff, there likewise no Action will lie.

The Plaintiff shews in his Count that the Defendant hath a Wife yet in life, and that the Defendant said of the Plaintiff, *Thou hast killed my Wife*; adjudged that the words were not actionable, because that it doth ap- Coke l. 4. fol. 16. a.

pear by the Plaintiffs Declaration, that the Wife of the Defendant was in life, ſo that by theſe words the Plaintiff could not be in any jeopardy, nor ſcandalized, or damnified by them.

Paſch. 5 Jac. in the Kings Bench.

The like caſe was put in Sir *Thomas Holt* and *Taylors* caſe, *Paſch.* 5. of King *James*, if one ſay of a woman, *That ſhe hath murdered her husband*, and ſhee and her husband bring the Action, it will not lie, becauſe it doth appeare by the record, that the ſlander is not prejudicial,

And as when it doth appear by the record, that the ſpeaking of the words could be no damage to the Plaintiff, no Action will lye. So where the ſpeaking of the words might be a damage to the Plaintiff, yet if the ground of that dampnification do not ſufficiently appear by the Record, the Action will not lye.

Mich. 15 Car. in the Common-Pleas.

A. brought an Action againſt *B.* for ſaying, *That he kept falſe Weights by which he did cozen, &c.* and declared that he gained his living by buying and ſelling, but did not ſhew of what profeſſion he was; adjudged that the Action would not lye, becauſe it cannot appear (without ſhewing his profeſſion) that the ſpeaking of the words could be any dammage to the Plaintiff.

Trin. 17 Car. in the Common-Pleas.

A. brought an Action againſt *B.* for theſe words; *Thou haſt killed my Brother (innuendo G. &c. fratrem &c. nuper mortuum)* adjudged that the words were not actionable, becauſe the Plaintiff did not aver, That he was dead

at

at that time when the words were ſpoken; and if he were living, then the ſpeaking of the words could be no ſlander or damage to the Plaintiff.

So, where a man brings an Action for *Welſh* words or the like, which are ſcandalous, and doth not aver, or ſet forth, that they were ſpoken to one who underſtood the meaning of them, the Action will not lye, becauſe it doth not appear by the Record, that the ſpeaking of the words could be any dammage to the Plaintiff. For if they were ſpoken to one that did not underſtand the meaning of them, no Action would lie, becauſe they could be no ſcandal to the Plaintiff. Hob. Rep. pag. 159. a. pl. 145. pag. 16. a. pl. 154. & pa. 161. pl. 236.

And now I ſhall add to the reſt, only this one ground where Words ſhall not be actionable, and that is in this caſe:

When a man is charged with a crime or offence by ſcandalous words, where it doth not appear by the words, that he had notice or knowledge of the ground or occaſion of the crime or offence, in ſuch caſe no Action will lie for ſuch words.

Bridges brought an Action for theſe words, He (*prefat' Bridges innuendo*) is a maintainer of Theeves, and he keepeth none but Theeves in his houſe, and I will prove it: upon a Writ of Error in the Exchequer-Chamber, it was holden the Words were not actionable, becauſe he might maintain Theeves without notice; and therefore the firſt Judgment was reverſed.

Like the Caſe in my Lord *Hobarts* Book, where an Action was brought againſt another, for ſaying, That the Plaintiff kept men which did rob upon the High-way; adjudged, That the words would not bear an Action, becauſe that he might keep them, and not know them to be ſuch perſons.

Mich. 40 & 41 of the Queen in the Common-Pleas.

In the caſe of *Read* and *Saul*, which was *Mich.* 40 & 41 of the Queen, this Caſe was remembred by *Wormeſley*, Juſtice, A man brought an Action in that Court for theſe words, *He* (meaning the Plaintiff) *is a receiver of Theeves*; and he ſaid, That in this caſe the Plaintiff could have no Judgment, becauſe that he might receive Theeves, and yet not know them to be ſo.

Mich. 7 Car. in the Common-Pleas.

A. ſaid of *B.* That he kept falſe Weights; for which *B.* brought his Action; adjudged that the Action would not lye, becauſe that it did not appear that he did uſe them: and beſides, for that he might keep falſe Weights, and not know them to be ſo.

Hob. Rep. pag. 8. pl. 11.

The Caſe of *Miles* and *Jacob*, cited before, is likewiſe to this purpoſe, where an Action was brought for theſe words, *Thou haſt poyſoned* Smith; adjudged, that the words would not bear an Action, becauſe that it did not appear that he did it wittingly.

Coke l. 4. fol. 15.

Stanhop brought an Action againſt *Blith*, for theſe words, *Mr.* Stanhop *hath but one Mannor, and that he hath got by ſwearing and forſwearing*; Reſolved, That the words were not

not actionable, for this reaſon (amongſt others) for that he might recover or obtain a Mannor, by ſwearing and forſwearing, and yet he not procuring or aſſenting to it.

And now I am come to the ſecond part or clauſe of that general Rule laid down before, where I am to ſhew you,

That ſcandalous words which touch or concern a man in his liberty, will bear an Action.

By the Books in the Margent, the Law is plain, that if I publiſh and claim *B.* to be my Villein, that in ſuch caſe no Action will lie, becauſe I my ſelf claim an intereſt in him, and the Law will not in ſuch caſe puniſh a man; for then no man durſt claim his own for fear of an Action.

2 F. 4. 5.
15 E 4 32.
17 E. 4 3.
13 H. 7. Kilway. fo. 25. b.
27. 21.

But upon theſe Books I conceive the Law is evident, That if a man had publiſhed another to be the Villein of *J. N.* that in ſuch caſe an Action would have layen, becauſe theſe words tend to the enſlaving of him, and his poſterity, and to the utter deprivation of his liberty which the Law ſo much favours; for, as it is well known, he that was a Villein, was ſubject both in perſon and eſtate to the will of the Lord, ſo that he might ſeize all his Eſtate real and perſonal, and vaſſalize his perſon at pleaſure, ſo that he did not kill or maim him.

But I conceive that at this day an Action in ſuch caſe will not lie, becauſe that time and inconvenience have quite aboliſhed and

worn out this Bondage, our Books have little upon this ground, therefore I ſhall thus paſs it over.

Scandalous words which touch or concern a man in Member, or in any corporal puniſhment, will bear an Action.

Hob. Rep. pag. 258 Mole and Rers caſe; & 27 H. 8. 22.

A man brought an Action for calling him Theef, and that he had ſtollen two Sheep from *B.* the Defendant juſtifies the calling of him Theef, for that the Plaintiff did ſteal the Sheep; And it was good by the whole Court, without expreſſing the value of the Sheep: for if they be not worth twelve pence, ſo that it is but petty Larceny, and not capital, yet it is Felony in its nature.

By this it is evident, that to ſay, a man hath ſtollen ſix pence from *B.* will bear an Action, though it be but petty Larceny, becauſe the Offender by Law may be impriſoned and whipt for it.

If a man ſay of another, that he is perjured, or that he hath forſworn himſelf in ſuch a Court, an Action will lie for theſe words: For by the Statute of 5 *Eliz. cap.* 9. a man convict of Perjury, forfeits 20 l. and is to have Six moneths impriſonment, and his teſtimony taken away while that conviction ſtands; and if he have not Goods and Chattels to the value of 20 l. then he is to be put into the Pillory, and his Ears to be nayled; ſo that you ſee here is an immediate corporal puniſhment given by this Statute, which is impriſonment.

Coke lib. fol. 15. & 19. br. Action upon the Caſe 104. Hob. Rep. pa. 114. pl. 107.

And

And if a man ſay of another, *That he can prove him Perjured*, an Action will lie, though it be but an implied affirmative.

Hearle againſt *Treſham*, *Thou haſt taken a falſe Oath in the Seſſions of, &c.* Reſolved the words were Actionable; for the Court ſhall intend this to be a Court of Record, as Records of which they ought to take conuſance. Hill. 1. Jac. in the Kings Bench.

Adams againſt *Flemming*; *He hath forſworn himſelf before the Councel of the* Marches *of* Wales *in the Suit I had againſt him there for Perjury*; Adjudged actionable. Hob. rep. p. 369. pl. 369.

In *Lelicke* and *Wrinckemores* Caſe, *Mich.* 7. of King *James* in the Kings Bench, one *Coſſiman*'s Caſe was cited, which was thus, *Thou waſt forſworn in ſuch a Biſhops Court*; it was ſaid, that theſe words were adjudged actionable, and ſo it was agreed by the Court. 24. of the Queen, *Coſſimans* Caſe.

It was moved by *Williams* in Arreſt of Judgment for theſe words, *Thou art a forſworn Knave, thou waſt forſworn in* Ilcon *Court* (*innuendo*, the Court Leet there holden) it was agreed, That the (*innuendo*) ſhould not ſtretch the words further than they were ſpoken: And *Williams* put this Caſe, which was in the Kings Bench, *Thou art a forſworn man, thou wert forſworn in* White-Church *Court*; Which was affirmed by all the Serjeants to be adjudged not actionable. Mich. 41. & 42 of the Queen, in the Common-Pleas. Coke lib. 4. 15. b. Yet *Quære* whether the Judges can intend this a Court of Record.

Which Caſe, I conceive, cannot be Law, becauſe it is adjudged, (as I have put the caſe before) that if one ſay of another that he hath forſworn himſelf in ſuch a Court, that the words

words are actionable, and in this caſe judgment was given accordingly.

Coke. lib. 4. fo. 171. Anne Davis caſe.

If a man ſay of a woman that ſhee hath a baſtard, an action will lie for theſe words, becauſe that ſhee is puniſhable by the Statute of 18. of the Queen cap. 3. at the diſcretion of the Juſtices, who alwayes inflict a corporall puniſhment upon them, as impriſonment, whipping, or the like.

Trin. 16. Jac. in the Kings Bench.

Morgan and *Rooks* caſe, *Morgan* ſaid of the Wife of *Rooks* ſhee is a bawde, and keeps a Bawdy-houſe, adjudged that the words were actionable upon a Writ of Error brought by *Morgan*, to reverſe the Judgment given in the Common Pleas, and judgment was affirmed.

Trin. 18. Car. in the Kings Bench.

Chambers and his Wife againſt *Kyle* for the ſame words; *Chamber*'s his wife is a Bawd, and keeps a Bawdy houſe, Adjudged the words were Actionable, and in this caſe it was agreed, that to ſay of a Woman ſhe is a Bawd, will not bear an action; becauſe ſhee is not puniſhable by the Law for it, but to ſay of her, that ſhe keeps a bawdy houſe will be Actionable, for that ſhe is puniſhable by the Law for keeping a houſe of bawdry.

A Prohibition was prayed, becauſe that *Elizabeth Thorne* had Libelled in Court *Chriſtian* againſt *Turnam* for defamation for theſe words, *Thou art a Bawd and doſt keep a Bawdy-houſe*, and it was granted by the whole Court becauſe that an action lyes at Common Law for theſe words.

The

The reason why an action lyes in these cases, is, because the party may be indicted for keeping of a Bawdy house; and if shee be thereupon convicted, shee shall be imprisoned and most ignominiously Carted, which are corporall punishments.

If a man say of another that he hath forged a Lease, Obligation, Release, or Acquittance, or the like, an Action will lie for these words; because that by the Statute of 5. of the Queen cap. 14. there are great and grievous corporall punishments inflicted upon such offenders, if it be to disturb a Title, the punishment is the greater, but if onely in the cases aforesaid, the Offender is to be put in the Pillory, one of his Eares to be cut off, and to be imprisoned for a year.

Hawes brought an action for these words my Cousen *Hawes* hath spoken against the Book of Common prayer; and said it is not fit to be read in the Church, *Heath* Justice, was of Opinion, That the words were actionable, though the offence be onely against a penall Law; for the Statute of 1. of the Queen cap. 2. gives a penalty onely for speaking against the Book of Common prayer; but in default of payment thereof imprisonment. And hee held that all scandalous words, which if they were true, would make a man lyable either to a pecuniary or a corporall punishment, would bear an action.

But *Mallet*, Justice, and *Bramston*, Chief Justice were of a contrary judgment, and their

their reaſon was, becauſe that if this ſhould be law, it would be a great occaſion to increaſe and multiply actions for words, which the Law labours to ſuppreſs as much as may be, for then all words ſpoken of any man, which if they were true, would ſubject him to a penalty, either by the Common, or the Statute Law would bear an action; as to ſay of a man, that hee hath erected a Cottage, or committed a Ryot, or the like, would be actionable, which the Law will not ſuffer for the reaſon aforeſaid: and judgment was given accordingly.

Mallet, Juſtice, in the arguing of this caſe, ſaid, that there was an action then pending in the Common Pleas, for calling of a man Recuſant, and he ſaid that his opinion was, the action was not maintainable: I never heard what became of that Caſe, but I conceive the Law to be with Juſtice *Mallet*; for though there be many penalties and forfeitures provided by Statutes againſt *Recuſants*, yet no corporall puniſhment is given by any of them, no not after conviction.

Hob. Rep. pa 183. pl. 188.

Thorneton brought an Action againſt *Jobſon*, and laid that he was a Carrier and of good fame, and that the Defendant ſaid of him, That he was a Common *Barrettor*. In this caſe the Book ſayes, that the Court was of opinion, that if theſe words were ſpoken of a Juſtice of Peace, or publike Officer, or of an Attorney, or the like, that they would bear an Action; by which it is evident the Court

Court did incline againſt the action in this caſe.

In an action upon the caſe for words, the words were, *I am ſorry for thy wife and Children, thou art a common Barretor, and I will indict thee for it at the next Aſſizes, &c.* adjudged the words were not actionable, and by *Yelverton* Juſtice, the action will not lie for ſaying that he is a Barretor, no more than for ſaying that he is a Riotor, a peace breaker, or the like, and an action will not lie for ſaying, that a man is a Rogue. Mich. 4. Jac. in the Kings Bench.

To ſay an Attorney, that hee is a Champertor, will bear an action. But I conceive upon the caſe aforeſaid, that to ſay of one, who is no Attorney, Juſtice of Peace, nor other publike Officer, that he is Champertor, or a common maintainer of ſuits, will not be actionable, nor is it actionable in caſe of the Attorney to ſay that he is a common maintainer of ſuits. Hob. Rep. pl. 159. pl. 14. Box and Barnabies caſe.

The reaſon of theſe caſes may be, becauſe that though any man may bee indicted for being a common Barretor, Champertor, or maintainer of ſuits, and thereupon fined and impriſoned; yet the puniſhment is onely the Fine, and the impriſonment as a conſequent or incident thereunto.

And as its ſaid before in *Hawes* caſe, if an action ſhould lie in theſe caſes, then in all caſes, where a man ſhall charge a man with a crime or offence, for which a man might be indicted and fined, an action would lie; which

which would occaſion multitudes of ſuits of this nature, that the Law labours ſo much to ſuppreſs.

And now I have ſhewn you what words which touch or concern a man in member, or any corporall puniſhment, will bear an Action. I ſhall in the next place ſhew you what words in ſuch caſe will not be actionable; and that may be in theſe caſes, either by reaſon of the doubtfull or indifferent meaning of them, or of the incertainty of the words themſelves, or of the perſons of whom they are ſpoken, or of the ſubſequent qualification of them, or upon the other grounds and reaſons which I have laid down before.

For we muſt know (that I may ſpeak once for all) that all thoſe grounds which are before ſet down, where words ſhall not be actionable, which touch or concern a mans life, will agree with all actions for words whatſoever, whether that the words touch or concern a man in corporal puniſhment, as before, or in his calling or function, by which hee gaines his living, or the like, as is manifeſted likewiſe in part before, and ſhall be more fully hereafter : but to the point, what words in this caſe will not be actionable.

Hob. rep. p. 159. pl. a. 45.

Box and *Barnabies* caſe, cited before, to ſay of an Attorney, that he is a Champertor, will bear an action, but to ſay that he is a common maintainer of ſuits, will not bear an action, for there is maintenance lawful and unlaw-

unlawfull; and an Attorney may, and ought to maintain his Clyents cauſe, and an Attorney may well be ſaid a common maintainer, becauſe he is common to as many as will retaine him; thus you ſee, words of a double intendment, ſhall be taken beſt for the Speaker, for the words in this caſe ſhall not be intended of any unlawfull maintenance, but of a lawful maintaining of his Clyents cauſes.

Stanhope brought an action for theſe words, *Maſter Stanhope hath but one Mannor, and that hee hath gotten by ſwearing and forſwearing*: adjudged the words were not actionable, for this reaſon (amongſt others) becauſe, that for ought appeares hee might be forſworn in ordinary Communication, and not in any judiciall proceeding, which is not puniſhable by the Law, and where the words are of an indifferent meaning, the Law will (as is ſaid before) take them the beſt for the Speaker.

Smith brought an action for theſe words; *Thou art forſworn, and haſt taken a falſe Oath at* Hereford *Aſſizes:* by the opinion of *Jones*, and *Bartley Juſtices* (the other *Juſtices* abſent) the action will not lie, becauſe that hee might be forſworn in ordinary Comunication; otherwiſe if he had ſaid, that he had taken a falſe oath in the Aſſizes, for there it ſhall be intended that he forſworn himſelf in a judicial proceeding. Paſch. 15. Car. in the Kings Bench.

In a caſe that I have cited before, which was *Mich.* 41. & 42. of the Queen in the Common Pleas: this caſe was remembred by

by *Williams*, thou art, *&c.* thou wert forſworn in the Kings Bench, he ſaid that in that Caſe the Plaintiff could have no judgment, becauſe of the double intendment of the words, for they may be taken that he was forſworn either in the Court, or the Priſon, and the beſt ſhall be taken for the ſpeaker, *viz.* that he was forſworn in the Priſon.

Coke lib. 4. fo. 16. 2. *Weaver* brought an Action againſt *Cariden*, for theſe words, he is detected, for perjury in the *Star Chamber*; adjudged that the action would not lie, becauſe that an honeſt man may be detected, but not convicted, and every one who hath a bill of perjury exhibited there againſt him is detected, here the words do not poſitively affirm him to be perjured, and therefore not Actionable.

Hob. Rep. pa. 3. pl. 4. *Thomas* brought an action againſt *Axworth* for theſe words: *This is John Thomas his writing, he hath forged this Warrant*; adjudged the action would not lie.

Hob. Rep. pa. 3. pl. 4. *Harvey* brought an action againſt *Duckin*, For ſaying that the Plaintiff had forged a Writing, adjudged that the words were not Actionable, the reaſon of theſe caſes is, becauſe of the incertainty of the words, *Warrant* and *Writing*, and as I have given you the rule before, the ſcandall muſt be certain and apparent in the words themſelves, otherwiſe they will not be actionable.

By *Tanfield Juſtice*, in *Wiſemans* caſe cited before, if a man ſay that one of his Brothers is perjured, no action will lie, beeauſe of the incertainty.

In

In the caſe which I put you before, moved by *Williams Mich.* 41. & 42. of the Queen in the Common Pleas, this caſe was remembred by *Walmſeley Juſtice*, one of you forged a *Subpœna* out of the *Chancery*, (*innuendo* the Plaintiffe) he ſaith that judgment was ſtayed in this caſe, becauſe hee which is grieved ought to be certainly defamed and the (*innuendo*) cannot make the words more certain, here likewiſe you have examples, that where the perſon is incertain that is ſcandalized, no action will lie.

Powell brought an action againſt *Winde*, for theſe words, *I have matter enough againſt him, for M.* Harley *hath found Forgery, and can prove it againſt him.* Reſolved the words were not actionable, becauſe they were too generall and utterly incertain. Hob. Rep. pag. 4. 57. pl. 395.

Britteridges caſe, cited before; *Britteridge* is a perjured old knave, and that is to be proved by a ſtake, parting the land of *H. Martin*, and Mr. *Wright*, adjudged the words were not actionable, becauſe the ſubſequeut words which extenuate the former, and explain his intent, that he did not intend any judiciall perjury, and becauſe that it is impoſſible, that a ſtake ſhould prove him perjured; here you have words that are not actionable, by reaſon of the qualification of the ſubſequent words; thus you may ſee, that the ground formerly laid down, may ſerve as a Touchſtone for all caſes of ſcandalous words. The third part of that rule or ground which I have laid down Coke lib. 4. fo. 19.

before, and which I am now to handle, is this.

That ſcandalous words ſpoken of a man, which touch or concern a man in his Office, or Place of Truſt, will bear an action.

Coke. lib. 4. fo. 19. a. and 16. a.

Skinner, a Merchant of London, ſaid of *Manwood*, Chief Baron, That he was a corrupt Judge; adjudged the words were actionable.

Coke lib. 4. fo. 16. a.

Stucley a Juſtice of Peace, brought an Action for theſe words, Mr. *Stuckly* covereth and hideth Felonies, and is not worthy to be a Juſtice of Peace; adjudged the Action would lie, becauſe it is againſt his Oath, and the Office of a Juſtice of Peace, and good cauſe to put him out of Commiſſion, and for this he may be indicted and fined.

Paſch. 7. Jac. in the Kings Bench.

Pridham and *Tuckers* caſe, to ſay of a Conſtable, that he is a concealer of Fellons, adjudged actionable.

Trin. 36. of the Queen Rot 223. in the Kings Bench.

Stafford, Juſtice of Peace, brought an Action againſt *Poler*, for theſe words; *William Web* being arreſted as acceſſary for ſtealing his own goods, Maſter *Stafford* knowing thereof, diſcharged the ſaid *Web* by an agreement of 3. l. to which Maſter *Stafford* was party, whereof 30. s. was to be paid to Maſter *Stafford*, and was paid to his man by his appointment; upon a Writ of Error brought in the Exchequer Chamber, it was holden the words were actionable.

Paſch. 37. of the Queen in the Kings Bench. Rot. 147.

Cotton Juſtice of Peace, brought an action againſt *Morgan*, for theſe words, Hee hath received

ceived money of a Thief that was apprehended and brought before him for ſtealing of certain ſheep; to let him eſcape, and to keep him from the Goal; adjudged the Action would lie.

Morris Gilbert, Juſtice of Peace, brought an Action againſt *Adams*, for theſe words, Mr. *Gilbert* hath done me wrong, in returning the Recognizance of *Podger* in 20. l. where it was taken in ten, and the ſureties in 10. l. a peece; by the whole Court, the words are Actionable. Paſch 4. Jac. in the Kings Bench. this caſe commenced Trin. 3.

If a man ſay of a Juſtice of Peace, that he is a common Barretor, Champertor, or maintainer of Suits, the words are actionable.

Carre brought an action againſt *Rande* for words, and declared that he was Steward to divers great Lords of their Court Barons and of the Leets within their Mannors, & that he was Steward of one *A.* of his Court Baron, and of the Leet within his Mannor, the Defendant of this not ignorant ſaid theſe words, Mr. *Carre* hath put a preſentment into the *Juries verdict* againſt me of 3s. 4d. for ſueing of *Peter Weſt* forth of the Court contrary *&c.* without the conſent of the Jury; by the whole Court the Action lies, becauſe he doth accuſe him of falſity in his office; but by the better opinion, if hee had not alledged in his Count, that he was Steward, the action would have layen. Mich. 4. Jac. in the Kings Bench.

Sir George Moore & Fosters case.

Sir *George Moore* brought an action against *Foster*, for scandalous words, and sets forth that he was a Justice of Peace, in the County of *Surrey*, and that there was a suit depending in Chancery betwixt the Defendant and one *Richard King*, and that a Commission was awarded to Sir *George Moore*, and others, to examine Witnesses in the said Cause, and also to hear and determine it; and that he with the others dealt in the execution of the said Commission, and that the Defendant said of the Plaintiff these words, *Sir* George *is a corrupt man, and hath taken Bribes of* Richard King; And at another time, *King hath set Sir* George Moore *on Horseback with bribes, whereby to defraud Equity, Justice and good Conscience*: Resolved, That the words were Actionable, because that though the Plaintiff be neither Officer, nor Judge, nor is sworn yet because it is a place of great Trust reposed by the King in the Plaintiff, and for that he is punishable by bribery or corruption, in the execution of the said Commission in the Court out of which it issues, not deserving (if the words were true) to be imployed in the like Commission, or any other: for these causes the words were held to be actionable: and *Popham*, *chief Justice*, in this case made no difference, where the Commission issues to one, and where to many; nor where they are nominated by the Court, or where by the party; for in the first case he said, the confidence of the Court is all one; and in the last,

laſt, though that they be nominated to the Court by the party, yet they ſhall not be Commiſſioners without the approbation of the Court.

Paſch. 17. Car. in the Kings Bench.

Sir *Richard Greenfield*, brought an action againſt *Furnace*, for theſe words, thou (innuendo, Captain *Greenfield*) haſt received money of the King to buy new Saddles, and haſt cozened the King, and bought old Saddles for the Troopers. It was objected, that the action would not lie, and it was likened to theſe Caſes which I will cite, becauſe they are worth the knowing.

8. Car. in in Kings Bench.

8. *Car.* the Major of *Tivertons* caſe, one ſaid of him that the Major had couzened all his Bretheren, *&c.* adjudged not actionable.

9 Jac. in the Kings Bench.

9. *Jac.* in the Kings Bench, the Overſeer of the poor hath couzened the poor of all their bread, this was likewiſe ſaid to be adjudged not actionable, but I do ſomewhat doubt of this caſe, becauſe the words do ſcandall the Plaintiff in his Office of Overſeer, but to this it may be ſaid, that this is an office of burden and trouble, and not of profit.

26. of the Queen in the Kings Bench.

26. Of the Queen in the Kings Bench, *Kerby* and *Walters* caſe, thou art a falſe knave, and haſt cozened my two Kinſmen, adjudged the words were not actionable.

18. of the Queen in the Kings Bench.

18. Of the Queen in the Kings Bench; Serjeant *Fenner* hath cozened me, and all my kindred, adjudged the words would not bear an action.

Out of which caſe we may (by the way)

obſerve this for Law, that if a man ſay of another (without any precedent communication of his Office, place of truſt, or profeſſion) that he is a couzening, or a cheating knave, or that he hath couzened any man thus, and thus, that no action will lie for ſuch words generally ſpoken; otherwiſe if they be ſpoken in reference to a mans office, place of truſt, or profeſſion.

And in the principall caſe, it was reſolved by *Heath* Juſtice, and *Bramſton* Chief Juſtice, (the other Juſtices being abſent) that the action would lie, becauſe the words did ſcandall him in his place of Truſt, and they ſaid it was not materiall what imployment the Plaintiff had under the King, if by the ſpeaking of theſe words he might be in danger of loſing his Truſt or imployment.

Hob. rep. pa. 104. pl. 93.

Bray brought an Action againſt *Hayne*, and declared, that where he had been Bayly to Sir *William M.* Kt. for three years laſt paſt of his Land in *C.* and had the ſelling of his Corn and Grain, the Defendant ſaid theſe words unto him, Thou art a couzening knave, and thou haſt couzened me in ſelling falſe meaſure in my *Barley*, and the Country is bound to curſe thee for ſelling with falſe meaſures, and I will prove it, *&c.* adjudged the words were not actionable, for every falſehood charged upon a man in his private dealing, will not be actionable. And in this caſe it doth not appear, that theſe words were ſpoken of any ſale of Corn, whilſt he was in his Office of Bayliff,

Note Reader, this caſe agrees with the caſes immediately before.

Bayliff, nor of his maſters Corn, nor to the damage of his Maſter.

But it was agreed in this caſe, That if he had been a common Rider or Badger, and had been charged with ſelling falſe meaſure, it would have born an action, which is evident, becauſe it is a ſlander to him in his function by which he gaines his living.

And my Lord *Hobart* put this caſe; If a man (ſaith hee) have a Bayliff, to whom he commits the buying and ſelling of his Corn and Grain, and gives him the greater wages in reſpect of that truſt and imployment, and charges him to have deceived him in his Office, by buying and ſelling of falſe meaſure, to his loſs or damage, this will bear an action, becauſe this diſcredits him in his office, and may not only be cauſe to put him out of that ſervice, but to be refuſed of all others; this caſe is evident Reader, becauſe the words do charge him with ſelling with falſe meaſure, whileſt he was in his office.

In the debate of Sir *George Moore*, and *Foſters* Caſe before cited, theſe Caſes were put by *Williams*, Juſtice, if one ſay of an Arbitrator, *That he hath done corruptly, and hath taken Bribes*, no action will lie; the reaſon may be, becauſe being choſen by the parties themſelves, and not being ſworn, ſuch corruption is not puniſhable by Law, nor can the countermanding of his power be any damage to him.

But if a man ſay of a Weigher in a Market or Fair, appointed to weigh betwixt the buyer and ſeller, That he hath done corruptly, and hath taken Bribes to make falſe Weights, an Action lyes for theſe words, becauſe he is an Officer.

Hob. Rep. pag. 375. pl.

Miles Fleetwood, General Receiver of the Court of Wards for the King, brought an Action againſt *Curbey*, for theſe words; *Mr.* Deceiver *hath deceived and couzened the King, and dealt falſly with him*; adjudged the words were actionable.

The like Caſe, where one ſaid of an Auditor, *That he was a Frauditor*, was adjudged actionable.

4 E. 6. br. Action upon the Caſe 1, 2.

An Action was brought for calling of the Plaintiff falſe Juſtice of Peace, *vel his ſimilia*. I do conceive that theſe words are not actionable becauſe that they do reflect upon his Office, yet they are too general. But the Book ſaith, That theſe words *(his ſimilia)* were ordered to be expunged or drawn out of the Book, for the incertainty; ſo well they might indeed; for certainly if a man ſhall bring an action againſt another, and ſhall declare that the Defendant ſaid of the Plaintiff, *That he was a Rogue and a Thief*; or words like theſe, or to this effect, the Action will not lie, becauſe the words upon the very face of the Declaration are utterly incertain.

The Law affords very few Caſes *(Readir)* where words ſhall not be actionable that ſcandal

candall a man in his Office or place of Truſt upon thoſe grounds which I have formerly laid down.

But not this well, That all thoſe grounds (as I have ſaid before) are as a Touch-ſtone for all Actions for words whatſoever; and therefore if you meet with ſcandalous words, which touch a man in his Office or Place of Truſt, examine them by thoſe Rules, if they be too general, or not ſufficiently poſitive, or if of a double intendment, or doubtful in meaning, or incertain in themſelves, or the perſon of whom they are ſpoken, or the like, in ſuch caſes they will not be actionable, and therefore thoſe Rules ought eſpecially to be obſerved.

The fourth part of that general Rule which I have laid down before, and which in courſe I muſt now ſpeak of, is this.

That words ſpoken of a man, which ſcandal him in his profeſſion or function by which he gains his living, will bear an Action.

Yardleys Caſe, there being a communication or diſcourſe of him in his profeſſion of Attorney, one ſaid, That he was *a bribing Knave*. Hob. rep. p. 13. pl. 7.

Boxes Caſe, one ſaid of him, being an Attorney, *That he was a Champertor*. Hob. Rep. pa. 359. pl. 145.

Byrchlyes Caſe an Attorney; there being ſpeech of his dealing in his Profeſſion, one ſaid to him, *You are well known to be a corrupt man, and to deal corruptly*; adjudged in all theſe Caſes, that the words, becauſe they ſcandal a Coke lib. 4. fo. 16.

man

man in his Profeſſion by which he doth acquire his living, were actionable.

Hob. rep. f. 183. pl. 188.

So by the Opinion of the Court in *Thornton* and *Jobſon*'s Caſe cited before, to ſay of an Attorney, That *he is a common Barretor*, will bear an Action.

Mich. 2. Jac. in the Kings-Bench.

Dawtry an Attorney in the Court of *Ipſwich*, brought an Action againſt *Miles*, for theſe words, *Dawtry is a Knave, and a Couzening Knave, and he did take Fees of both hands in a Suit between me and* Green, *and by knavery ſuffered me to be condemned at* Ipſwich *at* Greens *Suit wilfully, being Attorney for me*: The only words held conſiderable in this Caſe, were theſe; The Defendant's ſaying that the Plaintiff took *Fees of both hands*; and whether this would amount to as much as if he had ſaid the Plaintiff was an Ambidexter, was the Queſtion.

Popham and *Yelverton*, Juſtices, That the Action would not lie, becauſe that the words in this Cauſe may have a double intendment; for it may be intended that he took Fees with both hands lawfully: but if he had ſaid that he was an *Ambidexter*, an Action would lie; for this is *vo cartis*, and cannot be otherwiſe intended.

Fenner, and *Williams*, Juſtices, That the Action would lie, for that the words amount to as much as *Ambidexter*, and are the Engliſh of it, and a direct affirmation, and no Metaphor; if a man ſay of another that *he hath the*

the Pox, no Action will lie, becauſe it ſhall be intended the Small Pox: but if a man ſay of another, That *he hath been laid of the Pox*, there an Action will lie, becauſe it is the phraſe for the *French* Pox.

I do rather incline to the latter Opinion; becauſe (as hath been ſaid) theſe words are but the Engliſh aud proper meaning of *Ambidextory*; and to conſtrue them to a taking *Fees with both hands*, would be to make a conſtruction againſt the expreſs meaning of the words; which I conceive the Law will not permit: and the rather as this caſe is, becauſe that he doth charge him with Knavery in ſuffering of him wilfully to be condemned in a Suit being his Attorney. I do not find any Judgment in the Caſe, therefore I ſhall leave it to the Judicious *Reader*.

Phillips Parſon of *D.* brought an Action againſt *Badby* for theſe words, *Thou haſt made a Seditious Sermon, and moved the People to Sedition this day*: In this Caſe, notwithſtanding the firſt part of the words were utterly adjective, and the latter were but a motive to Sedition; and it doth not appear that any thing enſued thereof; yet becauſe they ſcandalized the Plaintiff in his Function, it was reſolved that they were Actionable. Paſch. 24 of the Queen in the Kings Bench.

If a man ſay of a Merchant, That he is a Bankrupt, or that he will be a Bankrupt within two dayes, the words are actionable. Coke lib. 4. fo. 19. 6 E. 6. Dyer 72.

Edmunds

Hill. 3. Jac. in the Kings Bench. Rot. 85.

Edmunds a Merchant, brought an Action againſt *Whetſtone* for theſe words, He would prove that Maſter *Edmunds* had been a Bankrupt, and had agreed with his Creditors for a Noble in the pound. It was moued in Arreſt of Judgment by *Hitcham*, That the Action would not lie, becauſe that the ſpeech refers to a time paſt, and though that he were once a Bankrupt, yet it may be now that he is of credit. But it was Reſolved, That the Action would lie, becauſe that it was an Impeachment of his credit; for if he were once a Bankrupt, every man will be the more ſuſpitious and fearful of him.

Paſc. 15. Jac. in the Kings Bench.

A Merchant brought an Action for calling of him *Couzening Knave*; by *Jones*, and *Barkley*, Juſtices (the other Juſtices abſent) the Action will not lie, becauſe that the words are too general; But if they had touched him in his Profeſſion, they would have born an Action. And therefore to call a Merchant *Bankrupt*, will bear an Action; but to ſay of a Lawyer that he is a *Bankrupt*, will not be actionable, The reaſon may be, becauſe that a Lawyer cannot be a Bankrupt, for that he doth not acquire his living by buying and ſelling, as the Statutes ſpeak.

Trin 37. of the Queen, in Cam. Scacc. *Oſ. Heſton* and *Stanley's* Caſe.

Jones, Juſtice, in the former Caſe, put this Caſe, there being a communication of Serjeant *Heale* in his Profeſſion, one ſaid of him theſe words, *He hath undone many*; adjudged, That the words were actionable, becauſe they touch him in his profeſſion. A

A Shoomaker brought an Action againſt one, for calling of him *Bankrupt*; adjudged upon a Writ of Error in the Exchequer Chamber, That the Action would lie.

Axe a Dyer, brought an Action againſt *Moode* for theſe words, *Toou art not worth a Groat*; and avers, That in ſuch a place where they were ſpoken they have the common acceptation, and equivalent to the calling of a man a Bankrupt; Reſolved, that the words of themſelves were not actionable, becauſe that many men in their beginnings are not worth a Groat, and yet their Credits are good in the world; And that the averment is idle, and could not make them actionable, becauſe that the words have a plain and proper ſignificant meaning of their own, and therefore cannot be taken in another ſenſe and meaning. Paſch. 15. Car. in the Kings Bench. Averment.

A Journeyman and foreman of a Shoomakers Shop, brought an Action for theſe words, *It is no matter who hath him, for he will cut him out of Doors*; and avers, That the common acceptation and intendment of theſe words, *inter Calſearios*, is, that he will begger his Maſter, and make him run away; and avers a particular damage by the ſpeaking of them: Reſolved, That the Action would lie. Paſch 15. Car. in the Kings Bench. Averment.

Note *Reader*, here the averment is good, becauſe the words, *Cutting out of Doors*, are of a doubtful meaning and intendment, and

ſo

ſo may be aided by an averment, ſo that the difference between this and *Axes* Caſe cited before, is evident.

Trin. 41 of the Queen in the Common-Pleas.

Knightly, an Attorney, brought an Action againſt *Childoner*, for theſe words, ſpoken to his Son, *My Father was not caſt over the Barre, as thy Father was*; The parties were at iſſue, and in this Caſe *Walmſley*, Juſtice, ſaid, That he conceived the words were not actionable.

Hob. r. rep. pa. 199.

Box and *Barnabies* Caſe before, the Defendant ſaid of the Plaintiff, being an Attorney, theſe words, (amongſt others which were held actionable) *That he would have him thrown over the Bar the next Term*; In this Caſe (agreeing with the Opinion of *Walmſley* before) the Opinion of the Court was, That theſe words were not actionable, becauſe of the incertain ſence and meaning of them.

Dickes a Brewer, brought an Action againſt *Fenne*, and declares, That the Defendant having communication with ſome of the Cuſtomers of the Plaintiff concerning him in his Profeſſion, ſaid theſe words of him, *I will give a peck of Mault to my Mare, and lead her to the Water to drink, & ſhe ſhall piſs as good Beer as* Dicks *doth brew*; adjudged the words not actionable, becauſe that they are Comparative only; and beſides they are impoſſible, and therefore they can be no ſcandal to the Plaintiff.

In

In this caſe it was ſaid by *Rolls*, Serjeant, That it had been adjudged actionable, to ſay of a Brewer, that *he Brews naughty Beer*; which was agreed by the Court, becauſe that he is preſentable in a Leet for it.

And likewiſe in this caſe it was ſaid by *Bartley*, Juſtice, That where one ſaid of a Lawyer, *That he had as much Law as a Monkey*, that theſe words were adjudged not actionable, becauſe that he hath as much Law, and more alſo than any Monkey hath: but if he had ſaid, that he had no more Law than a Monkey, theſe words would be actionable.

One ſaid of a Counceller at Law, That he was a *Concealer of the Law*; adjudged actionable.

Sanderſon and *Rudds* caſe, the Plaintiff being a Lawyer, and ſtanding for the Stewardſhip of a Corporation, the Defendant ſaid of him, *That he was an ignorant man*; The Court in this caſe inclined that the words were Actionable. Trin 17. Car. in the Common Pleas.

Snag, a Counſellor at Law, brought an Action againſt *Peter Gray*, for theſe words, *Go ye to him to be of your Counſel, he will deceive you, he was of Councel with me, and revelaed the ſecrets of my Cauſe*; Adjudged the words were actionable, becauſe that this cannot be intended of a lawful revealing to the Judge, by way of motion, before whom it was tried, for this were a commendation for him; Trin 13. of the Queen in the Kings Bench. Rot. 114. Cokes Entries fo. 22. a. b.

him; but the words are to be taken as they were ſpoken; that is *conjunctim*, and *uno halitu*, and then his intentions appears contrary; for he ſaid before, *He will deceive you*, &c. Alſo the Plaintiff declared that they were ſpoken *Malitioſe*; And theſe words, *Revealed the ſecrets*, &c. are to be intended revealed to thoſe from whom they ought to be concealed, and every man is to make the beſt of his cauſe, and therefore *ſecreta ſua non ſunt revelanda*; And alſo the words touch the Plaintiff in his Art and Science, which requires men of great Truſt and Confidence; and ſo the words before being ſpoken in derogation of the confidence and fidelity of the Plaintiff, are a great ſlander to him; for theſe cauſes Judgment was given for tht Plaintiff.

Upon this caſe I do conceive, that to ſay of a Lawyer generally, *That he revealed the ſecrets of his Clyents cauſe*, will bear an Action.

Paſch. 12 Car. in the Kings Bench.

One ſaid of a Doctor of Phyſick, That he was *a Mountebank*, *an Emperick*, *and a baſe Fellow*; adjudged the words were Actionable.

Paſch. 17. Car. in the Common Pleas.

Pain brought an Action upon the Caſe for words, and ſhewed how that he was a Farmer and uſed to ſow his Land, and to ſell the Corn upon it, and by this *per majorem partem*, he maintained his Family, and that the Defendant ſaid theſe words of him, *He keeps*

keeps a falſe Buſhel, by which he doth cheat and cozen the poor; and avers the loſs of his cuſtome by the ſpeaking of theſe words: In this caſe it was moved by *Godbolt*, Serjeant, in arreſt of Judgment, That the words were not actionable, becauſe it doth not appear that the Plaintiff kept a falſe Buſhel, *Scienter*, knowing it to be falſe.

But it was reſolved, That the words were actionable, for (as this caſe is) it muſt of neceſſity be taken, that he kept a falſe Buſhell, knowing it to be falſe, for otherwiſe it could be no cozenage.

And this Caſe plainly differs from the Caſe, where an Action was brought for ſaying, That the Plaintiff *kept falſe Weights*, generally; without further ſaying in this caſe, the words were adjudged not actionable, becauſe that it doth not appear that he uſed them, or knew them to be falſe.

The Fifth part of that General Rule, which I have laid down before, and which now I am in courſe to ſpeak of, is this,

That words ſpoken in ſcandal of a mans Title, or which tend to a mans diſ-inheritance, will bear an Action.

Hill. 6 of the Queen, in the Common-Pleas, adjudged & after affirmed in a Writ of Error, Mich 26 of the Queen in the Kings Bench. Rot. 31.

Henry Mildmay brought an Action againſt *Roger Standiſh*, for ſaying, and publiſhing, That certain Land was lawfully aſſured to one *John Talbot* and *Oliff* his Wife, for a 1000 years, and that they of the intereſt of

the Term were lawfully poſſeſſed; whereas in truth there was no ſuch matter: and ſo for ſlandring of the Eſtate and Title conveyed to his Wife by certain Indentures, and ſhewed all incertain, and how he was prejudiced by the ſaid words, he brought the ſaid Action.

The Defendant pleaded a Proviſo in the ſame Indentures, and the ſaid limitation for 1000 years, according to the ſaid Proviſo, as he pretended (whereas in truth the ſaid limitation was void in Law) by force of which he ſaith, That the ſaid *Oliffe* had an intereſt for a Thouſand years, and ſo juſtified the words, upon which the Plaintiff demurred: adjudged that the Action would well lie; though that the ſaid *John Talbot* and *Oliffe* his Wife had ſuch a limitation *de facto* for a Thouſand years, which occaſioned the Defendant being unlearned in the Law, ſo to publiſh it; yet for that he hath taken upon himſelf notice of the Law, and medled in that which did not concern him, and hath affirmed and publiſhed, that *Oliffe* had a good Eſtate for a Thouſand years, in ſlander of the Title of the Plaintiff, and to his prejudice, for this cauſe Judgment was given for the Plaintiff.

Hill. 3 Jac. Rot. 519 B. R. *Coke's* Entries, fo. 352.

Sir *Thomas Greſham* Knight, brought an action againſt *Robert Gunſley*, Clark, and ſhews how his Father was ſeized of divers Mannors and Lands, and amongſt them of the Mannor of *Titteſey*, which he did by his Will

will among other lands deviſe to *Beatrice* his wife, for life, the remainder to the plaintiff and the heirs males of his body begotten, and had iſſue *William Greſham* his eldeſt ſon, and the plaintiff the younger, and dyed, and that *William* after his death confirmed to *Thomas* his eſtate, and that *Beatrice* dyed, and the plaintiff entred into the ſaid Mannour of *Titteſey*, and further ſhews, that *William* had iſſue, *Elizabeth* his heir apparent, and ſons and daughters, and that he had an intent to convey ſome of his lands to his wife for her joynture, and ſome to his Sons and daughters for their advancement, and to exchange parcell with others, and to make a Leaſe of another party, but doth not ſhew to whom, and that the Defendant *premiſſorum non ignarus* in derogation of the Title and Eſtate of the plaintiff, ſaid theſe words to the plaintiff; As I before ſaid to your Wife, I ſay now that your brother was a fool, and never born to doe himſelf any good, for that hee could not hold his hands from ratifying and ſubſcribing to his Fathers Will; but yet notwithſtanding, I have that to ſhew in my houſe, that if his heir do not any ſuch act as hee hath done, it ſhall bring her to inherit *Titteſey*, by which words he ſaith, that he was hindred in the conveyances aforeſaid.

In this caſe it was reſolved, that the action would not lie; firſt, becauſe that the words themſelves are not ſcandalous to the Title of the plaintiff; the words conſiderable are one-

ly theſe, that he had that in his houſe,&c. that ſhall bring her (that is, the Daughter and heir of *William*) to inherit *Titeſey* which was apparently feaſible, for the plaintiff being Donee in Taile of the gift of his Father, the Daughter and Heir of the eldeſt brother is inheritable to the Revertion in Fee, and ſo no prejudice to the plaintiff, to ſay he hath that which ſhall bring her to inherit.

Beſides, the action will not lie, becauſe that he doth not ſhew any ſpecial damnification by the ſpeaking of theſe words, as that he was upon a ſale of theſe lands to *I. S.* who by reaſon of the ſpeaking of theſe words, refuſed to buy them, or the like; and in this caſe here was nothing but a purpoſe, or intent for conveying ſome of theſe lands.

And *Popham*, *Juſtice*, ſaid, that there is a difference when a man declares his opinion of the Title of another to land, this is nothing, and he ſhall not be puniſhed for it, but if he doth ſo publiſh it, that it comes to the hearing of any one that intended to buy the Land, in ſuch caſe an action lyes, but he muſt ſhew ſpecially in his Count, in what he was damnified, otherwiſe the action will not lie.

Trin: 25. of the Queen in the Kings Bench.

Baniſter brought an action againſt *Baniſter*, for that the Defendant ſaid of the plaintiff (being Son and Heir to his Father) that he was a Baſtard, reſolved, that the action would lie, for this tends to his diſ-inheriſon of the Land which diſcends to him from his Father.

But

But in this case it was resolved, that if the defendant pretend that the plaintiff was a Bastard, and that he himself was next heire, there no action lyes.

So if a man say, that another hath no right to land, an Action lyes; but if a Counseller say that his Clyent hath the better right, this will not bear an action.

Mich. 3. *Jac.* in the *Kings Bench*, *per Curiam*, if one say to me, that I am a Bastard, if I have Land by descent, I shall have an action upon the Case, and though that I have land by descent, and this tends to my dis-inheritance, if I sue in *Court Christian* for it, a prohibition lyes, because that the tryall there may be to my dis-inheritance.

And if one say to another, that he is base born, an action will not lye: for the words shall be taken in *meliori sensu*. And if one say to his Son, that he is a Bastard, or a Leaper, hee shall not have an action, neither in *Court Christian* nor at common Law.

Sir *Gilbert Gerrard* brought an action against *Mary Dickinson*, and declares how that he was seized of certain lands in fee, and that he was in communication to demise them to *Ralph Egerton* for 22. years for 200. l. Fine, and 100. l. rent *per annum*; and that the Defendant (*premissorum non ignarus*) said, I have a Lease of the Mannor and Castle of *H.* (which was the same lands) for ninety years, and shewed and published it, *&c.* by reason of which words (he saith) the said *Ralph* Coke lib. 4 fo. 18.

Egerton did not proceed to accept the Leaſe, *&c.*

In this caſe it was reſolved, that no Action would lie for the ſaid words, though they were falſe, becauſe that the Defendant pretended an intereſt in the ſaid land.

So if the Defendant had affirmed and publiſhed, that the Plaintiff had not any right to the ſaid Land, but that ſhe her ſelf had right to it, in this caſe, becauſe that the Defendant pretends Title to it, though, that in truth, ſhee hath not any, yet no Action lyes. For if in ſuch caſe an Action ſhould lye, how could any one make claim or Title to any land, or commence any ſuit, or ſeek, adviſe and Councell, but he ſhould be ſubject to an Action; which would be very inconvenient.

2. F. 4. 5. 15. E. 4. 32. Agreeing with theſe caſes, in 2. E. 4. and 15 E. 4. it is reſolved, that no action upon the caſe lies againſt one for publiſhing another to be his Villein.

The ſixth part of that generall Rule which I have laid down before, and am now to ſpeak of, is this.

That ſcandalous words which tend to the hinderance or loſs of a mans advancement, or preferment, or which cauſe any particular damage, will bear an action.

Coke lib. 4. fo. 16. b. *Anne Davis* brought an action againſt *Gardiner*, for theſe words, ſpoken to one B. a Suter

Suter to the Plaintiff, and with whom a marriage was almoſt concluded; I know *Davies* Daughter well, ſhee did dwell in Cheapſide, and a Grocer did get her with Child, *&c.* and ſhee ſaith, that by reaſon of the ſpeaking of theſe words, the ſaid *B.* utterly refuſed to take her to Wife, ſo that thereby ſhe loſt her advancement, &c. adjudged that the Action would lie, becauſe that if ſhe had a Baſtard ſhe was puniſhable by the Statute of 18. of the Queen, cap. 3.

But it was in this caſe further reſolved, that if the Defendant had charged the Plaintiff with bare incontinency only, yet the action would have lain, by reaſon that by the ſaid ſlander, ſhe was defeated of her advancement in marriage.

And it was in this caſe likewiſe reſolved, that if a Divine be to bee preſented to a Benefice, and one to defeat him of it, ſaith to the Patron that he is a Heretique, or a Baſtard, or that he is excomunicated, by which the Patron refuſes to preſent him (as hee well might if thoſe imputations were true) and hee loſes his preferment, that in this caſe an action will lie.

Dame Morriſon Widdow, brought an action againſt *William Cade* Eſquire, and declares that ſhee was of good fame, &c. And that *Henry Earl* of *Kent* was in ſpeech and communication with her for marriage, the defendant *premiſſorum non ignarus*, ſaid theſe words, *Arſcot* hath reported that hee had the uſe of the Hill. 4. Jac. in the Kings Bench. Rot. 1133.

Lady *Morrisons* body at his pleasure, ubi *revera*, *Arscot* never reported it, and alledged that the Earl of *Kent* upon the hearing of the words surceased his suit, by which she lost her advancement *&c.* upon not guilty pleaded, it was found for the Plaintiff, and in this case it was resolved, that though the words charge the Plaintiff with bare incontinency only, which an is Offence Ecclesiastical, and not civil, nor punishable by our Law, yet because of the temporal damage, *viz.* the loss of her advancement in marriage, the Action would well lie, which agrees with the Judgment in *Anne Davies* case.

Trin. 17 Car. in the Common-Pleas.

Sanderson and *Rudds* case cited before; the Plaintiff being a Lawyer, stood for the Stewardship of a Corporation, and the Corporation being assembled to elect a Steward, the plaintiff was motioned to them; whereupon the Defendant being one of the corporation, said to his Brother, he is an ignorant man, and not fit for the place: and the plaintiff sets forth, that by reason of these words, they did refuse to elect him Steward, so that he thereby lost his preferment, *&c.* the Court in this case inclined that the Action would lie.

And now I am fallen upon a question very necessary to be resolved, and that is.

What words are Actionable of themselves only, and what are not actionable, without alledging of a particular damage; I take this for a Rule,

Rule, That Scandalous words which touch or concern a man in life, liberty, or member, or any corporall puniſhment, or which ſcandall a man in his office, or place of truſt, or in his calling, or function, by which he gaines his living, or which charge him with any great infectious diſeaſe, by reaſon of which hee ought to ſeperate himſelf, or to be ſeperated by the Law from the ſociety of men; all ſuch words will bear an action, without averring or alledging of any particular damage by the ſpeaking of them.

Yet I do not deny, but that it is beſt to alledg a particular damage, if the caſe will bear it; and it is uſuall ſo to doe in theſe caſes, for the increaſe of damages.

Bramſton, Chief Juſtice, in the arguing of *Hawes* caſe, which I remembred before, took this for a Rule, that if words did import a ſcandall of themſelves, by which damage might accrue, in ſuch caſe the words would bear an action without alledging of a particular damage. Mich. 17. Car. in the Kings Bench.

But now on the other ſide, words which doe not touch or concern a man in any of the caſes aforeſaid will not bear an Action, without alledging of a particular damage.

Words ſpoken in ſcandall of a mans Title, will not bear an action, without averring of a particular damage, as appeares by the caſes before cited upon that ground.

There are many words, which are words of paſſion, and choller only, as to ſay of a man, that he is forſworn generally, or that he Coke lib. 4. fo. 15. b.

is

is a villain, or a rogue or a varlet, or the like, theſe words are not actionable of themſelves; yet I do conceive that in theſe caſes an action will lie, with an averment of a particular damage, by reaſon of the ſpeaking of them.

Averment.

Coke 4. lib. 4. fo. 17. a. & fo. 20. 27 H. 8. 4. the Regiſter fo. 54.

There are other words which concern matter meerly Spirituall, and determinable, in the Eccleſiaſticall Court only: as for calling of a man a Baſtard, a Heretique, a Schiſmatique, an Advowterer, a Fornicator, for calling of a woman a Whore, or charging her with any particular act of incontinency, or the like, yet in theſe caſes with an averment of a particular damage, an action will lie at the Common Law, as it is adjudged in *Anne Davis* caſe cited before.

Coke. l. 4. fol. 17.

By *Popham*, Chief Juſtice, If a one ſay of a Woman that is an Inholder, that *ſhe hath a great infectious diſeaſe*, by which ſhe loſes her gueſts, an Action will lye; This muſt be taken with an Averment of that particular damage; otherwiſe an Action will not lie, unleſs the diſeaſe be ſuch, for which ſhe ought to ſeparate her ſelf, or to be ſeparated by the Law from common ſociety, as I ſhall ſhew you hereafter.

Paſch. 15. Car. in the Kings-Bench.

Ax and *Moods* Caſe cited before, the Plaintiff being a Dyer, brought an Action for theſe words, *Thou art not worth a Groat*; adjudged, That the words were not Actionable, becauſe that many a man in his beginning is not worth a Groat, and yet hath good credit with the world.

But

But in this Case it was agreed, That if the Plaintiff had aver'd specially, that he was thereby damnified, and had lost his credit, so that none would trust him; with such an averment the Action would have layn.

In the Case of the Foreman of a Shoo-makers Shop, cited before, for these words; *It is no matter who hath him, for he will cut him out of doores*: The Plaintiff averr'd, that the Common acceptation of these wotds, *Inter Calceareos*, is, That he will begger his Master, and make him run away; and shewed a special damage by the speaking of these words: and it was adjudged that the Action would lie, which I conceive was only for the particular damage; for to say of a Servant, that he doth Cheat, Couzen or defraud, or that he will begger his Master, or the like, will not bear an Action, without an averment of a particular damage. Pasch. 15. Jac. in the Kings Bench.

And in this Case it was said by the Court, That for some words an Action will lie, without an averment of any particular damage, as for calling of a man *Theef*, *Traytor*, or the like; and some words will not bear an Action, without an averment of a particular damage.

As if a man shall say of another, That he *kept his Wife basely, and starved her*; these words of themselves will not bear an action; but if the party of whom they were spoken, were to be married to another, and by these words is hindred; in such case, with an averment

ment of the particular damage, an Action will lie.

Mich. 15. Car. in the Kings-Bench.

So likewiſe in the Caſe of *Dickes* and *Fen*, which I alſo cited before, where one ſaid of the Plaintiff being a Brewer, *That he would give a peck of Mault to his Mare, and lead her to the Water to drink, and ſhe ſhould piſs as good Beer as the Plaintiff Brewed:* It was reſolved, That the words themſelves were not actionable, becauſe of the impoſſibility of them. But it was agreed by the Court, That if there had been a ſpecial damage alledged, as loſs of Cuſtome, or the like, the Action would have lain.

Mich. 17. [illegible]

Hawes Caſe cited likewiſe before, one ſaid of him, that he had ſpoken againſt the Book of Common Prayer, and ſaid that it was not fit to be read in the Church; for which he brought his action, and ſhewed how that by reaſon of the ſpeaking of theſe words by the Defendant, he was cited into the Eccleſiaſtical Court, and had paid and expended ſeveral ſums, &c. adjudged that the words themſelves were not actionable, becauſe if they had been true, they charge him only with an offence againſt a penal Law, which doth not inflict corporal puniſhment, but for non-payment of penalty.

But it was reſolved, That for the particular damage the Action would lye; And of this Opinion were *Heath* and *Mallet*, Juſtices.

But *Bramſton*, Chief Juſtice, (the other Juſtice being abſent) was of a contrary Judgement

ment, and he took this for a rule, That if the words did not import a ſcandal in themſelves (as He conceived they did not in this caſe) in ſuch caſe the averment of a particular damage ſhould not make them Actionable.

But with all due reſpect to the Judgment of this Learned Judge, I do conceive that the words are in themſelves ſcandalous; becauſe that they do charge a man with faction and oppoſition to eſtabliſhed Law, and ſetled Government.

But if they were not in themſelves ſcandalous, yet I conceive (according to the Judgement of thoſe Reverend Judges) that for the damage only the Action will lie, for otherwiſe the Plaintiff ſhall ſuffer through the default of the Defendant, and he without remedy, which I conceive the Law will not permit; but I ſubmit this to the Judgment of the Learned Reader.

Laſtly, *Words which charge a man with any dangerous infectious diſeaſe, by reaſon of which he ought to ſeparate himſelf, or to ſeparate by the Law, from the ſociety of men, will bear an Action.*

If a man ſay of another, *That he hath the* French *Pox*, an Action will lie.

Taylor brought an Action againſt *Packins* for theſe words, *Thou art worthy not to come into any honeſt mans company, thou art a Leprous Knave,* Coke lib. 4 fo. 17 a.

Knave, and Leper; adjudged that the words are Actionable, becauſe that it is cauſe of Separation by the Law of God and Man.

Hill. 4 Jac. in the Kings Bench. So by *Tanfield*, Juſtice, to ſay that one is infected with the *French Pox*, will bear an Action; but to ſay that one hath the Falling-Sickneſs, is not actionable, except that it diſables him in his Profeſſion; as to ſay that a Lawyer hath the Falling-ſickneſs, an Action lieth, becauſe that it diſableth him of his buſineſs.

Upon this ground I conceive, to ſay of a man that he is infected with the Plague, will bear an Action, becauſe this alſo is a dangerous infectious diſeaſe, and a cauſe of ſeparation.

I have now finiſhed my task of ſhewing you what words are Actionable in the Law, and what not. And yet, *Reader*, I ſhall not end this Treatiſe here, for there are many things worthy the knowing (which I could not aptly introduce before) and therefore not to be omitted.

There are Two Things or Grounds very remarkable in all Actions upon the Caſe for words.

Firſt, Cauſa dicendi, *the ground or occaſion of the ſpeaking of the words*: And that muſt be collected out of the precedent diſcourſe or communication concerning the Plaintiff; or elſe

elſe out of the Relation that the words themſelves have to the Defendant, or otherwiſe as the caſe ſhall fall out to be.

The next thing is the affection of the Speaker, that is to ſay, Whether the words were ſpoken Ex malitia, *or not?*

Firſt, for the firſt, *Cauſa dicendi*, the ground or occaſion of ſpeaking of the words.

And here I ſhall lay down this as a ground, *That ſcandalous words which of themſelves ſingly would bear an Action, yet being joyned to other words or diſcourſe, and ſo* Cauſa dicendi, *or the ſubject matter being conſidered, they will not bear an Action.* For, *Senſus verborum ex cauſa dicendi accipiendus eſt, &c.* And words muſt ever be conſtrued according to the ſubject matter.

Henry Lord *Cromwell* brought an Action *de ſcandalis magnatum* againſt *Edmond Denny*, Vicar of N. in the County of *Norfolk*, &c. for theſe words; *It is no marvel that you like not of me, for you like of thoſe that maintain ſedition againſt the Queens proceedings*: The Defendant pleaded a ſpecial Juſtification, in effect thus; That the Defendant being Vicar of *N.* the Plaintiff procured *J. T.* and *J. P.* to preach there, who in their Sermons enveighed againſt the Book of Common Prayer, and affirmed it to be ſuperſtitious, wherefore the Defendant inhibited them, for they had no licenſe nor authority to preach, yet they proceeded

Coke l. 4. fol. 13. b.

Coke ubi ſupra.

ceeded through the encouragement of the Plaintiff; and the Plaintiff ſaid to the Defendant, *Thou art a falſe Varlet, I like not of thee.* To whom the Defendant ſaid, *It is no marvel though you like not of me, for you like of thoſe* (meaning the aforeſaid *J. T.* and *J. D.*) *that maintain Sedition* (meaning that ſeditious Doctrine,) againſt the Queens proceedings.

In this Caſe it was adjudged, That the Juſtification was good, for though that in this caſe taking the words ſingly of themſelves, as the Plaintiff hath declared, they might have been actionable; becauſe that then they could not be conſtrued otherwiſe than of a publike and violent ſedition, as the word it ſelf doth import.

Yet now the ground and occaſion of the words appearing, by which it is evident, that the Defendant did not intend any publike or violent ſedition, but only that Seditious doctrine againſt the proceedings of the Queen, *viz.* the Statute *de anno primo*, by which the Common Prayer was eſtabliſhed; and God forbid (ſaith the Book) that words by a ſtrict and Grammatical conſtruction ſhould be taken contrary to the manifeſt intent of the Speaker. Therefore it was Ruled upon the coherence of all the words, That the Juſtification was good, and ſo the words not Actionable.

And in this Caſe it was Ruled, That if a man bring an Action againſt another for calling

ling of him *Murderer*, and the Defendant will ſay that he was ſpeaking with the Plaintiff of unlawful Hunting, and that the Plaintiff confeſſed that he had killed divers Hares with certain Engines; to whom the Defendant anſwered and ſaid, *Thou art a Murtherer*; (meaning the killing of the ſaid Hares) that this was a good juſtification; and ſo upon the whole matter the words not Actionable.

Byrckely an Attorney, brought an Action againſt one, for theſe words, *You are well known to be a corrupt man, and to deal corruptly*; Reſolved, that the words were actionable: But in this Caſe it was Ruled, That if the precedent ſpeech had been, that *Byrchley* was a Uſurer, or that he was Executor of another, and would not perform the Teſtament, and upon this the Defendant had ſaid theſe words upon a ſpecial Juſtification, as aforeſaid, they would not bear an Action. Coke lib. 4. fol. 14. b.

Baniſter and *Baniſters* Caſe reſolved, That if I call an Heir a *Baſtard*, an Action will lie; but if the Defendant pretend that the Plaintiff is a *Baſtard*, and that he is next Heir, there no action will lie. The reaſon of this is plain, becauſe *Cauſa dicendi*, or the occaſion of ſpeaking of theſe words, is not to defame the Title of the Plaintiff; but only to juſtifie the Title of the Defendant; and it is lawful for any one to ſpeak in juſtification of his own Title, though he do thereby ſeem to ſlander the Title of another man: Agreeing Coke l. 4. fol. 17.

with this Case, is *Gilbert Gerrards* Case cited before.

Pasch. 15. Car. in the Kings-Bench.

Molton brought an Action against *Clapham*, and declares, how that there being a Cause pending in this Court, betwixt the Plaintiff and Defendant, upon reading of certain Affidavits of the Plaintiff's in Court, the Defendant said openly, *in presentia & auditu Justiciariorum, & jurisperitorum, &c.* There is not a word true in the Affidavids, which I will prove by 40 witnesses, and alledges that the words were spoken *malitiose*; yet it was resolved by the Court, That they were not actionable, because as they are usual words upon the like occasion, so they are spoken in the defence of the Defendant's cause; and this Case was likened to the case of the *Bastard* immediately before.

And *Bartley*, Justice, said, That there are two things mainly considerable in words, the words themselves, and *Causa dicendi*, and therefore sometimes though the words themselves would bear an Action; yet *Causa dicendi* being considered, they will not be actionable as in this case.

Coke lib. 4. fo. 14. a.

Now as my Lord *Coke* sayes in *Cromwell's* Case before remembred, so I say to you. In these Cases, *Reader*, you may take notice of an excellent point of Learning in Actions for Slander; to observe the cause and occasion of speaking of them, and how this may be pleaded in excuse of the Defendant

But

But before I pass this, *Reader*, I shall observe unto you, That the Defendant in these cases might take the general Issue, if he would, *viz.* That he is not guilty, *modo & forma*, as the Plaintiff hath alledged, and so give in evidence the coherence and connection of the words, and the occasion of speaking of them, and have them specially found if it be conceived to be necessary. Coke lib. 4. fol. 13. b. 14. a.

Or the Defendant may (as the case shall require) justifie the speaking of other words, and traverse the speaking of the words in question, and so likewise upon the evidence have the words specially found.

And hereupon, *Where the special finding of the Jury will warrant the Declaration of the Plaintiff, and maintain the Action, and where not, may be very questionable, and worthy the knowing.*

The Defendants plea is that which must guide us in these cases, if he plead not guilty, the words are (as I have said before) *modo & forma*, as the Plaintiff hath alledged; and if he justifie the speaking of other words, and traverse the words in question, he doth it thus, *absque hoc*, that he spake the words in the Declaration *modo & forma*, as the Plaintiff hath alledged.

Now where the words that are found by the Jury shall be said to agree *modo & forma*, with the words in the Declaration, this is the question; here I shall lay down this ground,

That where the words that are found do not

agree with the Declaration in the ſubſtantial and eſſential form, that in ſuch caſe they do not warrant the Declaration: But if they do agree in the ſubſtantial and eſſential form, though they agree not in every word, yet they do well warrant the Declaration, and by conſequence maintain the Action.

Hob. Rep. pag. 252. pl. 313.

Sydenham againſt *Man* for theſe words; *If Sir* John Sydenham *might have his will, he would kill all the true Subjects in* England, *and the King too; and he is a maintainer of Papiſtry, and rebellious perſons*; The Defendant pleaded other words, and traverſed the ſpeaking of the words, *modo & forma*, &c. the Jury found that he ſpoke theſe words, viz. *I think in my Conſcience, that if Sir* John Sydenham *might have his will, he would kill, &c.* and find all the ſubſequent words before alledged, and whether the Defendant were guilty of ſpeaking of the words in the manner and form as they are alledged by the Plaintiff in his Declaration, was the queſtion reſolved againſt the Defendant.

And upon a Writ of Error in the Exchequer-Chamber, the Court alſo inclined againſt the Defendant; for the matter is in effect the ſame, and the form muſt be underſtood the eſſential form, not according to every word, here you have the ground laid down before.

Yet the Book ſaith, that *Paſch.* 16. though the Court inclined that either of the words would bear an Action, yet it was agreed, That the words were not found ſo abſolute

as

as the Declaration, neither moved credit in the ear ſo fully, which is the force of a Slander; and then they are not the ſame words in effect; as if the words were ſaid, *I know him to be a Thief*; and it were found, *I think him to be a Thief.*

For my part, *Reader*, I doubt in this Caſe, Whether the finding of the Jury do warrant the Declaration, becauſe they are not the ſame words in force and effect (as is ſaid before) And I conceive they are not the ſame in the eſſential form of them; for I queſtion (as I have done before) if a man ſhould ſay of another, *That he doth think if he might have his will, he would kill all the Kings true Subjects, and the King too*; or, *That he doth think ſuch a one to be a Thief*; whether theſe words be actionable or no, becauſe the words are no poſitive charge, but onely the thought or opinion of the Defendant.

But to this it may be ſaid that if ſuch words as theſe ſhould not be actionabie, this would open a gap for ſcandalous Tongues, to ſlander a man at pleaſure and yet no action lye, which were very miſchievous; therefore I ſhall leave it to the judgment of the *Reader.*

Fenner againſt *Mutton* in an action upon the caſe for words, which were thus, *Nicholas Fenner* procured 8 or 10 of his neighbours to perjure themſelves, the defendant pleaded not guilty aud the Jury find that the defendant ſaid that *Nicholas Fenner* had cauſed 8 or 10 of his neighbours to perjure themſelves, Mich. 4. Jac. in the Kings Bench.

and if this Verdict were found for the Plaintiff, or the Defendant, was the queſtion: and the doubt was, Whether this word *Cauſe*, amounts to as much as *Procure? Tanfield*, Juſtice, ſeemeth that it doth not; for he might be a remote cauſe, as *Cauſa ſine qua non*, and yet no procurer, as if a Notary Writ, a Writing, and put to this a ſeal, and another take it and forge and publiſh it, the Writer was the cauſe that this was forged, and yet no procurer of it. I find no Judgment in thls Caſe, therefore *quere* of it.

Hill 3 Jac. in the Kings Bench.

Chipſam againſt *Jeek* for theſe words; Chipſam *is a Theef, for he hath ſtollen a Lamb from* A. *and Geeſe from* B. *and killed them in my Ground:* Iſſue was joyned, Whether the Defendant ſpoke the words *modo & forma, &c.* The Jury find that the Defendant ſaid, *That the Plaintiff was a Theef, for he hath ſtollen a Lamb from* A. *and killed it in my Ground:* but they find that he ſpoke nothing of the Geeſe; yet it was Reſolved, That the finding of the Jury did well warrant the Declaration of the Plaintiff, becauſe that the ſubſtance of the word is, That he is a Theef, and therefore he hath, &c. only a demonſtration in what he is a Theef, which is as well in ſtealing of the Lamb, as of the Geeſe, and then if it be found that he ſaid any of them, it ſufficeth; and Judgment was given for the Plaintiff.

Norman

Norman and *Symans* caſe; The plaintiff brought an action for words, and declared, that they were ſpoken *falſo & malitioſe*; the Jury find the words ſpoken *falſo & injurioſe*, and it was adjudged, that the action would not lie, becauſe the finding of the Jury doth not warrant the Declaration in the ſubſtantial form of it; for if the words were not ſpoken out of *malice*, they will not be actionable, as I ſhall ſhew you hereafter. Trin. 7. Car. in the Kings-Bench.

Brugis brought an action for theſe words, *Brugis* is a maintainer of theeves, and a ſtrong thief himſelf; iſſue was joyned whether the Defendant ſpoke the words *modo & forma*, and the Jury found all words, except the words (*ſtrong*) and in this Caſe the Plaintiff had judgment. 6. E. 6. Dyer fo. 75. fo. 21.

Here we may obſerve, that though every word alledged in the Declaration, be not found, yet the eſſential and ſubſtantial forme of the words being found, that is ſufficient to maintain the Declaration. This I ſay you may obſerve, not onely by this Caſe, but the caſes alſo before put.

Barbar brought an action againſt *Hawley* for theſe words, *John Barber* and his Children be falſe Theeves, men cannot have their Cattell going upon the Common, but they will kill them, and eat them, &c. iſſue was joyned whether the Defendant ſpoke the words, *modo & forma*, and the Jury found that he ſpoke theſe words, viz. Men cannot have their Cattel going upon the Common,

but *John Barbar* and his Children will kill them with *Barbars* Doggs; in this caſe it was adjudged for the Defendant.

The reaſon is plain, becauſe the words found by the Jury, do vary in the eſſentiall and ſubſtantiall form, from the words in the Declaration; For the words in the Declaration, do charge the Plaintiff with Theft: for which an action would lie, but the words found by the Jury, charge him only with treſpaſs, for which no action will lie; I have ſufficiently proved the ground laid down before, and therefore I ſhall now proceed to the ſecond thing (which I have touched before) very conſiderable in all actions for words; and that is.

Quo animo, with that affection the words are ſpoken, whether ex malitia, *or not? for if it do appear that they were not ſpoken out of malice, they will not be actionable.*

Mich. 3. Jac. in the Kings Bench.

Ralph Brook, *York Herrauld*, brought an action againſt *Henry Montague*, Knight, Recorder of London, for ſaying of the Plaintiff, that he had committed Felony. The Defendant pleaded how that he was a Counſeller, and learned in the Law, and that he was retained of Counſell againſt the Plaintiff at ſuch a Tryall, and ſet forth all the matter in certain, and that he in giving evidence to the Jury, ſpoke the words in the Count (which words were pertinent to the matter in iſſue) in this caſe it was reſolved that the action would not lie, becauſe that the words were

not

not ſpoken out of malice, for that they were ſpoken to the purpoſe, and being to the purpoſe, though the words were falſe, no action will lie againſt the Defendant.

As in an Appeal of murder, if the Councell with the plaintiff, ſaith that the Defendant committed the murder, though it be not true, yet he ſhall not be puniſhed for it, becauſe that what he ſaid was pertinent, ſo that it cannot be taken to be ſpoken out of malice but only as of counſel for the Plaintiff.

But if that which he ſaith be impertinent in ſcandall of him againſt whom he ſpake it, as in Treſpaſs of battery to ſay that the Defendant is a Felon, there an Action will lie, for that they cannot be otherwiſe taken, but to be ſpoken out of malice.

And in this Caſe it was further ſaid, that if a Counſellor be informed of any matter of ſlander apt to be given in evidence, and hee ſpeaks it at other places, and at another time, then in evidence an action lyes for it, for the ſame reaſon,

In confirmation of the former Caſe, there was this caſe put and agreed for Law, which was the Caſe of Parſon *Prit* in *Suffolk*, the caſe was thus, In the Acts and Monuments of Mr. *Fox*, there is a relation of one *Greenwood* of *Suffolk*, who is there reported to have perjured himſelf before the Biſhop of *Norwich*, in the teſtifying again a Martyr, in the time of Queen *Mary*, and that afterwards by the judgment of God, as an exemplary

puniſhment for his great offence, his bowels rotted out of his belly.

And the ſaid Perſon *Prit* being newly come to his benefice in *Suffolk*, and not well knowing his Pariſhioners, preaching againſt perjury, cited this ſtory for an example of the juſtice of God, and it chanced that the ſame *Greenwood* of whom the ſtory was written, was in life and in the Church at that time, and after for this ſlander brought an action, to which the Defendant pleaded not guilty, &c. and upon evidence all the matter appeared, and by the rule of *Anderſon* Juſtice of Aſſize, he was acquitted, becauſe it did appear the defendant ſpoke the words without malice, and this rule was approved by the Kings Bench in this caſe.

In the arguing of *Sanderſon* and *Rudds* caſe, which I remembred before, theſe caſes following were cited by *Godbolt* Serjeant, who was of counſell with the defendant, and agreed by the Court for Law.

40. & 41. of the Queen in Common-Pleas.

James and *Rudlies* Caſe; the Defendant ſpoke by way of advice to his friend, telling him that the Plaintiff was full of the French Pox, & therefore adviſed him not to keep him company, adjudged [he ſaid] that no Action would lie for thoſe words of adviſe; the reaſon is, becauſe that theſe words were not ſpoken out of any malice to the Plaintiff, but meerly out of good will to his friend.

Norman,

Norman, and *Simons* caſe, remembred before, the Plaintiff brought an action for words, and declared that they were ſpoken *falſo & malitioſe*; the Jury finde the words, and that they were ſpoken *falſo & injurioſe*, jugdment was given that the Action would not lie, becauſe that they did not find the malice; for if the words were not ſpoken maliciouſly, no action will lie. Trin. 7. Car. in the Kings Bench.

And therefore I conceive, that if a man bring an action for words, and do not declare that the words were ſpoken *malitioſe* as well as *falſo*, that the action will not lie.

In the caſe of the Lady *Morriſon* that I have cited before, this caſe was put by *Popham, chief Juſtice*; If one ſay in counſell and good will to his friend that it is reported that he hath done ſuch an ill act, and adviſes him to purge himſelf, and avoid ſuch occaſion afterwards; it ſeems [ſaith he] than an action will lie for ſuch counſel; but *quære* ſaith the Reporter, for it is without malice. And truly for my part, I conceive an action will not lie, for that reaſon, but I ſubmit it to the judgment of the Reader. Hill 1. Jac. in the Kings Bench.

And now I have finiſhed my labour of ſhewing you what words are actionable in the Law, and what not. It will in the next place, be very neceſſary to be known, where a mans Suit or proſecution at Law, ſhall ſubject a man to an action, and where not & here I ſhall lay down this as a rule.

That

13. H. 7. Keilway fo 26. 11. of the Queen Dyer. fo. 2.

That for any ſuit, or other legall proſecution in courſe of Juſtice (if not out of malice and touching a mans life) no action will lie.

A man brought a Writ of Forger of falſe deeds againſt a Lord, pending which Writ, the Lord for the ſlander of the ſaid Forgery by the ſaid ſuit, brought his action *de ſcandalis Magnatum*; the Defendant juſtifies the ſaid ſlander, by bringing of the ſaid writ, by the better opinion there (which is alſo agreed for Law in *Bucleys* Caſe in my L. *Cooks* 4th Book) the juſtification was good, for (ſaith the Book) no puniſhment was ever appointed for a ſuit in Law, though that it were falſe, and for vexation.

Coke lib. 4 fo. 14. b.

Cutler and *Dixons* Caſe, adjudged that if one exhibit *Articles* to a *Juſtice* of *Peace* againſt a certain perſon, containing divers great abuſes and miſdemeanours, not only touching the Petitioners themſelves, but many others; and all this to the intent that he ſhould be bound to his good behaviour: In this caſe the party abuſed ſhall not have for any matter contained in ſuch *Articles*, an *Action upon the Caſe*, becauſe that they have purſued the ordinary *courſe of juſtice* in ſuch Caſe, and if *Actions* ſhould be permitted in ſuch Caſes, thoſe which have good Cauſe of Complaint, will not dare to complain, for fear of infinite vexation.

Owen Wood exhibited a Bill in the Star-Chamber againſt Sir *Richard Buckley*, and charged him with divers matters examinable

ble in the ſame Court, and further, that he was a maintainer of Pirates and Murderers, and a procurer of Murders and Pyracies (which offences were not determinable in the ſaid Court) upon which Sir *Richard Buckley* brought an action.

In this Caſe it was adjudged, that for the ſaid words not examinable in the ſaid Court, an action would lie, becauſe this could not be in *Courſe of Juſtice*; for that the Court hath not power or juriſdiction, to do that which belongs to *juſtice*, nor to puniſh the ſaid *offences &c.*

Alſo, by the Law, no *Murder* or *Pyracy* can bee puniſhed upon any Bill exhibited in *Engliſh*, but the offender ought to be indicted of it, and upon this to have tryal; ſo that hee that preferred this Bill hath not onely miſtaken the proper Court, but the manner and nature of proſecution, ſo that it hath not any appearance of an ordinary ſuit in *courſe of juſtice.*

But if a man bring an Appeal of murder returnable in the Common Bench, for this no Action lies; for though this Writ is not returnable before competent Judges, which may do *Juſtice*, yet it is in nature of a lawful ſuit, namely, by writ of appeal.

Scarlet brought an action againſt *Stiles* for theſe words; *thou didſt ſteal a Sack.* The Defendant pleaded that there was a Sack of a mans, unknown, ſtollen, and that the common fame was, that the plaintiff had ſtollen Hob. Rep. pa. 268. pl. 238.

len it, whereupon the Defendant did inform *Thomas Kempe* a Juſtice of peace, that hee had ſtollen it, and in complaining and informing the ſaid Juſtice thereof, hee did there in the preſence of *Kempe*, and of the plaintiff, ſay unto the plaintiff, and of him, *thou didſt ſteale, &c.* whereupon the plaintiff demurred in Law.

There is nothing ſpoken to the caſe in the Book; but I conceive the Law will be ſomewhat ſtrong for the piaintiff, that the demurrer is good, and that the action (notwithſtanding the defendants juſtification) will well lie.

Hob. Rep. pa. 112. pl. 105.

For though common fame (as it is agreed in *Chudington* and *Wilkins* caſe) be a ſufficient warrant to arreſt for felony, though the ſame be not true, as alſo charge a man with Felony (as it agreed in *Bland* and *Maſons* caſe) becauſe theſe tend to the advancement of Juſtice; yet it doth not warrant any man, to ſay he is a Felon and a Thief; for though common fame be ſuch, yet the party ſuſpected may be innocent.

Hob. rep. pa. 425. pl. 381.

Nor doth it any way difference the caſe, That the words were ſpoken before a Juſtice of Peace, becauſe though common fame may (as I have ſaid) warrant him to charge him with Felony before a Juſtice of Peace, yet it cannot warrant him to call him Felon.

A man brought an Action againſt another for calling of him a Theef; The Defendant pleaded, That there was a Robbery done, *&c.*

&

& communis vox & fama patriæ, was, That the Plaintiff was guilty of it, and ſo juſtifies; but the juſtification was held nought, for common fame that a man is a Theef, will not juſtifie any man in the calling of him ſo. But there it is agreed, That it would defend a man in arreſting and impriſoning another for it. Hob. rep. pa. 93. pl. 71. & pag. 112. pl. 105.

Chudington and *Wilkins* Caſe, adjudged, That to call a man a Theef after a General or Special Pardon, though the Defendant knew it not, will bear an Action: but there it is agreed, That to arreſt a man for Felony after Pardon if he knew it not, may be juſtifiable; becauſe it is a legal courſe and an Act of Juſtice.

In Juſtice *Croke*'s Caſe it was agreed by the Court, That though it be lawful for a man to prefer a Bill in the Star-Chamber againſt a Judge for corruption, or any other, for any grand miſdemeanour, becauſe it is a proceeding in an ordinary courſe of Juſtice. Yet if the Plaintiff will publiſh the effect openly, by this means to ſcandal the Defendant, this is puniſhable in another Court, notwithſtanding the Bill pending in the Star-Chamber, becauſe this tends meerly to ſcandal, and not to a purſuing of the ordinary courſe of Juſtice; and ſo *Jones*, Juſtice, ſaid it had been adjudged. Trin. 16. Car. in the Kings-Bench.

Owen Wood, and *Buckleys* Caſe, cited before, doth in effect make good that which Juſtice *Jones* ſaid; The Caſe was thus; *Owen Wood* exhibited

exhibited a Bill in the Star-Chamber, againſt Sir *Richard Buckley*, and charged him with very great miſdemeanours: afterwards *Buckley* brought an Action againſt *Owen Wood*, for publiſhing, That the ſaid bill and matters in that contained were true, and had Judgment; which was afterwards reverſed in the Exchequer-Chamber, becauſe that the Plaintiff layd, That the Deſendant publiſhed the Bill to be true, without expreſſing the matters in particular contained in the Bill, upon which the Action was intended to be founded, ſo that thoſe which heard only the ſaid words that his Bill was true, cannot without further ſaying, know the clauſes which were ſlanderous to the Plaintiff. So that it is in this caſe plainly admitted, that if he had publiſhed the particular matters contained in the Bill, and this had been ſhewn by the Plaintiff, there the Action would have layen.

Note Reader, I have inſerted this Clauſe, in the Rule before laid down, (where the *proſecution* in *courſe* of *Juſtice*, is not out of *malice*, and touching a mans life) for this reaſon;

Becauſe I do conceive, That in caſe where a man is ſcandalized in his reputation, and his life in queſtion, by a malitious proſecution in courſe of Juſtice, that in ſuch caſe an Action will lye.

F. N. B. Coke lib. 5. fo. 56. The Poulterers Caſe.

If two falſly and malitiouſly Conſpire to *indict* another, and after he that is ſo *indicted*, is

is *acquitted*, a Writ of *Conſpiracy* lyes. So if one only, falſly, and malitiouſly cauſe another to be indicted, who is thereupon acquitted, an Action upon the Caſe in Nature of a Conſpiracy, lyes againſt him for it; and ſo it hath been often adjudged; I ſhall only remember one caſe in point.

Marſham brought an Action againſt *Peſcod*, and declares how that he was of good fame and report, and that the Defendant intending to defame him, *falſo & malitioſe*, procured the Plaintiff to be indicted of Felony, and to be arreſted and impriſoned, *Quouſq; fuit acquietatus*; ſo that the alledging of the acquittal, was inſufficient, for that he ought to have ſaid, That he was *legitimo modo acquietatus*; The Defendant pleaded not guilty; and it was found for the Plaintiff: And *Richardſon* ſaid in Arreſt of Judgment, That this Action will not lie, if it be not alledged that he was lawfully acquitted; and ſaid, That *F. N. B.* had the like Writ; and there it is alledged expreſly, that he was lawfully acquitted; and ſo it ought here. Paſch. 3. Jac. in the Kings-Bench.

Tanfield, Juſtice, A Conſpiracy, not an Action in nature of a Conſpiracy, will not lie, if the Plaintiff be not *legitimo modo acquietatus*: but if one procure another to be indicted, arreſted, and impriſoned, *falſo & malitioſe*, he ſhall have an Action upon the Caſe for the ſlander and vexation, though that he be never acquitted; and he ſaid, That the like Action upon the Caſe had been adjudged

to lie well, though that the Plaintiff were never acquitted: And the Justices relyed much upon the words *falso & malitiose*; and after Judgment was given for the Plaintiff.

Thus you may see, That where a man is falsly and malitiously procured to be indicted, if he be acquitted, a Writ of Conspiracy, or an Action upon the Case in nature of a Conspiracy, as the Case shall be, will lie; and though he be not acquitted, yet an Action upon the Case will lie for the slander and vexation. Yet in all these Cases, there is a prosecution in course of Justice; but because this prosecution was malitious, tending much to the slander and scandal of the Plaintiff, therefore the Action lyes.

But here I would have you observe, *Reader*, That the Plaintiff ought in these Actions to declare, That the Defendant, *falso & malitiose* procured him to be indicted, because the *Malice* is the ground of the Action; and if upon the Tryal it do appear, that there was *Probabilis causa* for the Indictment and Prosecution thereupon, the Action will not lie: Thus much shall suffice to shew you, in what case a legal prosecution in course of Justice, shall subject a man to an Action, and in what not.

In the next place I shall shew you (which I cannot omit)

For what scandal of a Noble-man, or great Officer, &c. an Action de scandalis Magnatum, *will*

will lie upon the Statutes of 3 E. 1. *cap.* 33. or 2 *R.*2. *cap.*5.

For a Suit, or other legal proſecution in Courſe of *Juſtice*, againſt a Noble-man, or great Officer, no Action lies, as is adjudged in the Caſe of *Forger* of falſe Deeds cited before: So that as to this, there is no difference betwixt a Noble-man, and another perſon, but what ſcandalous words may be actionable in caſe of a Noble-man, for which an Action *de ſcandalis Magnatum* will lie. and what not, may be very Conſiderable. I ſhall cite only one Caſe to this purpoſe, which will be as a light to all Caſes of this nature: and therefore give me leave to give it you wholly (without diſſection or abbreviation) as I find reported.

The Earl of *Lincoln* brought an Action *de ſcandalis Magnatum* upon the Statute of *Weſtm.* 1. *cap.* 33. againſt one *John Righton*, and recited the Statute, and ſaid that the Defendant ſaid of him, *My Lord is a baſe Earl, and a paultry Lord, and keeps none but Rogues and Raſcals like himſelf.* Upon Not guilty pleaded, it was found for the Plaintiff; and it was moved in Arreſt of Judgment, That the words were not Actionable; for though they were unſeemly and immodeſt, yet they were not ſuch defamatory words upon which to ground an Action: for though they were true, the Earl could not incur any prejudice by them; *Croke cont.* This Action *de ſcandalis Magnatum*, is

not to be compared to other Actions upon the Case, for words spoken of any other persons; for this is inhibited by Act of Parliament: and if the words be such, that any discord may arise by them betwixt the King and his Subjects, or his Nobles, or any slander to them, to bring them into contempt, this Action lyes: And I have seen a Record of a Case in 4 *H.* 8. of such an Action brought by the Duke of *Buckingham*; for such words which might cause him to be in contempt, which were holden sufficient upon which to ground an Action. *Hobart*, Attorney General for the Plaintiff also, who said, That though an Action doth not lie for words betwixt common persons, but in case where they are touched in Life or Member, or much in reputation; yet if one speak any scandalous words of an Earl, or other Peer of the Realm, which impeaches their credit, because that they are of the great Councel of the King and State, and a principal part of the Body Politick, so that their discredit or disparagement, is a disparagement to all the Realm; therefore every thing which trenches only to their discredit is a a cause of Action; and this was the cause of the Judgement in the Case of the Duke of *Buckingham*, in 4 *H.* 8. *Fenner*, Justice, It seems to me that the Action lies, for they are woads of great Slander to the Earl. But where the Statute of *Marlb.* is, That Lords shall not distrain

the

the Beasts of the subject of the King, and carry them into Castles, so that they cannot be replevied; and if one say that a Lord hath so done, yet an Action will not lye: *Tanfield*, Justice, *concessit*, but he saith, If one say of a Lord that he used to distrain and put the Beasts in his Castle, *ut supra*, an Action lies; for one Act against Law will not bring him into contempt: but if it be usual for him so to do, this is a cause to make him contemptible. In the Case of the Earl of *Arundel*, who had made Commissions to his Servants to make Leases, and improve Rents, one said of him, *My Lord hath sent his Commissioners to spoyl the Countrey*; it was adjudged, That this Action would lie: and yet in case of a common person, it would not lie without doubt; yet because that it may cause the Lord to be in contempt with the King and the people, this Action lay; and so it seems to me that it will here: *Williams*, Justice, to the same purpose, and that the Earl is *Conservator Pacis* at Common Law, and *Comes Regis*, and if any one speak of them any thing which may make them to be contemned of the King or his people, an Action lies upon this STATUTE.

Yelverton, Justice, was absent, Judgment was respited, to the intent that the Defendant by his submission might give satisfaction to the Earl.

Here you see the difference between words actionable in case of a Nobleman, and of a

common perſon: For words only of diſcredit to a Nobleman, and which may bring him to contempt with the King or his people, are ſufficient to maintain an Action *de ſcandalis Magnatum*; otherwiſe in caſe of a common perſon.

Next we ſhall declare unto you more particularly the Uſe and Office of an (*Innuendo*) and alſo ſhew you where an (*Averment*) will be neceſſary, and where not.

For the firſt, you may take this for a certain, and infallible Rule;

That an (Innuendo) *ſhall never make words Actionable, which of themſelves are not Actionable.*

And therefore, if words be of a double or indifferent meaning, and in the one ſence Actionable, in the other not, in ſuch caſe an (Innuendo) *ſhall never make them Actionable.*

As if a man ſay of another, *He hath forſworn himſelf* (Innuendo *before the Juſtices of Aſſize*, &c.) This *Innuendo* ſhall not make the words Actionable, becauſe that it cannot be gathered by the words that he intends, that it is ſuppoſed by the *Innuendo*. *P.* 40 *El.* B.R. adjudged.

Or if a man ſay of another, *He did burn my Barn* (Innuendo *a Barn with Corn*) *with his own hands, and none but he:* This *Innuendo* will not make the words actionable. *Co.* 4. *Barham* 20. adjudged.

So if one ſay of another, *He hath burnt my Barn* (*Innuendo* a Barn with Corn, and adjoyning

joyning to a dwelling house) *and if my Lord had done him Justice, he should have been hanged for it.* This *Innuendo* will not make the words actionable, *Trin.* 43 *Eliz.* B.R. between *Levet* and *Hawthorn, per Curiam.*

In an Action of the Case for Scandalous words, the Plaintiff declared that the Defendant said of him these words, *Thou hast poysoned* Smith (*Innuendo quendam Samuelem Smith adtunc defunctum*) *and it shall cost me* 100 *l. but I will hang thee.* Adjudged, That this is no sufficient Averment of the death of *Smith*, it being but in the *Innuende*, without which the Action doth not lye. *Jacob* and *Miles* Case, *Pasch.* 11 *Jac. in Banco.*

Mich. 12 *Jac.* in B. R. between Doctor *Everard* and *Ball*, Adjudged in arrest of Judgment, That if the Plaintiff declare that he was Instituted and Inducted into a Benefice called *W.* in *Northamptonshire*, and that the Defendant with an intent to slander his Title thereunto said these words, *The Parsonage of* W. *is none of the Doctors* (Innuendo the Plaintff) this is no sufficient Averment that the words were spoken of the Plaintiff, no communication being had of him before.

In an Action upon the Case for these words, *Thou art a Traytor, and an Arch-Traytor, and I will hang thee, or hang for thee.* Upon the Defendants pleading, That the Plaintiff said these Trayterous words of the King, *viz. The King* (*Innuendo* King *James*)

is a Scurvey King; by reaſon of which words he ſpoke the words in the Declaration: Adjudged, That this is no good Juſtification, *Paſch.* 16 *Jac.* B.R. *Whitbrooke* and *Smith*'s Caſe.

In an Action upon the Caſe, if the Plaintiff declare that the Defendant ſaid theſe words, *Thou art a Theif, and ſtolleſt a Mare* (*Innuendo* the Plaintiff) without averring, that the words were ſpoken *eidem querenti vel de eodem querente*, as is uſual, this is not good, becauſe it appears not of whom they were ſpoken, and the *Innuendo* will not help it, *P.* 11 *Car.* in B. R. between *Burges* and *Reeves*, in a Writ of Error upon a Judgment in the Common-Pleas; and it was reverſed accordingly. *Intratur Hill.* 10 *Car. Rot.* 674. Although in the Writ as well, *ſcilicet*, *dixit eidem querenti*, *Trin.* 1650. between *Smith* and *Andrews*, adjudged in a Writ of Error upon a Judgment in the Common Pleas, Entred *Trin.* 1649. *Rotulo* 1649. And yet there was laid a Communication of the Plaintiff.

Paſch. 13 *Jacobi* in the Common Pleas between *Harvey* and *Duckin*, If the Plaintiff declare, That whereas *J.S.* hath made a Bill to him of 40 l. debt, and hath ſealed and delivered it, the defendant ſpoke theſe words of him, *That he had ſhewed him a bill of* 40. l. *(meaning that bill) releaſed, and after ſhew'd it him ſealed; and that he had forged the ſaid ſeal*

to

to the writing. Adjudged that the Action doth not lye upon this Declaration, for the *Innuendo* is not a ſufficient Averment that the words referre to the ſaid bill of 40 l. without alledging of ſome communication of it before, for the words of themſelves are uncertain.

In an Action upon the Caſe, for ſaying, that the plaintiff was perjured in his anſwer in the Star-Chamber, *Innuendo* in a certain Bill of Complaint exhibited there by the now plaintiff againſt the now defendant, where it is well known that the plaintiff there is not ſworn to his bill, yet becauſe that the words themſelves are actionable, and the *Innuendo* is repugnant to it, it was adjudged that the Action is maintainable, *P.* 40. *El.* in B. R. *Corbet* & *Hills* Caſe.

In an Action upon the Caſe for ſaying of the plaintiffs, *You and your wife are Witches, and have bewitched my Mare* (*Innuendo* the Mare of the defendant;) Adjudged that this is a repugnant and void *Innuendo*, and that the Action lyes for theſe words without any *Innuendo*, *Mich.* 24 *Car.* in B. R. *Smith* & *Cokers* Caſe, it being moved in arreſt of Judgment. Entred *Trin.* 4. *Car. Rot.* 1499.

If a man bring an action againſt another for ſaying that he hath the Pox (*innuendo* the French Pox) in this & the like caſes the (*innuendo*) where the words are of an indifferent meaning, and may be taken ſo as not Coke. lib. 4 fo. 17. b. & 20. a.

to

to be actionable, ſhall not ſtrain them to ſuch an intendment, as to make them Actionable; and therefore the (*innuendo*) in theſe caſes is idle and to no purpoſe.

So if the words be incertain of themſelves, or the perſon of whom they are ſpoken, an (innuendo) *ſhall never make them actionable.*

Mich. 15. Car. in the Kings Bench. cited before.

If a man bring an action againſt another for ſaying that the Plaintiff took away money from him with a ſtrong hand (*innuendo felonice*) here the words being incertain in the intendment, whether of a Treſpaſs, or Felony the (*innuendo*) cannot extend them to an intendment of Felony, thereby to make them actionable, and ſo it was adjudged.

Hob. rep. pa. 3. pl. 4. Hob rep. pa. 6. 3. pl. 48.

So if a man bring an action againſt another, for ſaying that he forged a warrant (*innuendo quoddam Warrantum, &c.*) or for ſaying that he forged a writing (*innuendo* ſuch a writing) In theſe caſes, becauſe the words themſelves are utterly incertain, adjudged that the (*innuendo*) ſhall never make them actionable.

Coke lib. 4. fo. 17. b.

A Servant of *B.* brings an action againſt one for theſe words; One of the Servants of *B.* (*innuendo* the Plaintiff, is a notorious Felon, or Traytor, &c.) And if an Action be brought for theſe words, *I know one near about* B. *that is a notorious Theef*, (*innuendo* the Plaintiff,) in theſe Caſes, becauſe of the incertainty of the parſons intended by the words, the [*Innuendo*] ſhall not make them actionable.

I

I could multiply Caſes upon this ground, but becauſe theſe will be ſufficient, I will add only the Office of an [*Innuendo.*]

The Office of an [Innuendo] *is only to contain and deſign the ſame perſon, which was namcd incertain before:* As thus, Two are ſpeaking together of *B.* and one of them ſaith, *He is a Theef*: There *B.* in his Count may ſhew that there was a ſpeech of him betwixt thoſe two, and that one of them ſaid of him, *He* (*innuendo* the Plaintiff) *is a Theef.* Coke lib. 4. fo. 17. b.

Or elſe to declare the matter or ſence of the words themſelves, which was certainly expreſſed before: As thus, *A.* and *B.* ſpeaking of *C. A.* ſaid that *C. was a Traytor*; To whom *B.* ſaid, *That he was ſo too*: In this caſe, if *A.* bring an Action for theſe words, he may ſhew in his Count, that there was a ſpeech betwixt him and the Defendant of *C.* and that the Plaintiff ſaid to the Defendant, that *C.* was a *Traytor*, and that the Defendant ſaid then to the Plaintiff, That he (*innuendo* the Plaintiff) *was ſo too* [*innuendo* a Traytor.]

In both theſe caſes the (*innuendo*) is good, becauſe it doth its Office, in deſigning of the perſon, as alſo in declaring of the matter or ſence of the words which were certain before.

But an (*Innuendo*) cannot make a perſon certain, which was incertain before, nor alter the Coke lib. 1. fo. 17. b.

the matter or ſence of the words themſelves; for it would be inconvenient, that Actions ſhould be maintained by imagination of an intent, which doth not appear by the words, upon which the Action is founded; but is utterly incertain, and ſubject to deceiveable conjecture.

For by this means, if I ſhould be ſuffered to be the declarer of the meaning or intendment of the incertain and doubtful ſpeeches of another man; I might judge him to ſpeak that, he never thought or intended, and ſo puniſh him for that wherein he never offended.

The next Thing to be conſidered, is, Where an Averment will be neceſſary in theſe Actions, and where not: And here I ſhall lay down this as a ground,

That in all Caſes for words where there is any thing that is the cauſe or ground of the Action, or tends neceſſarily to the maintenance of it; in ſuch caſe the Action will not lie, without that thing be expreſly averred to be, or not to be, as the caſe requireth.

Mich. 11 *Car.* B. R. *Spencer* brought an Action upon the Caſe againſt *Mudburne*, and declared, That there was a Communication of the Plaintiff, between the Defendant and *J. S.* and that the Defendant ſaid theſe words of the Plaintiff, *Go tell my Landlord (innuendo* the Plaintiff*) that I ſay he is a Thief, and ſtole two Shuts for a Window, and I will hang him, if any Law will do it; and if I cannot do it, the*

Bayliffs

Bayliffs ſhall do it. This is not a ſufficient Averment that the words were ſpoken of the Plaintiff; There being no Averment that he was the Landlord of the Defendant.

Note Reader, The Court was divided in their Arguments upon this Caſe when it was moved in Arreſt of Judgment; but afterwards, *viz. Hill.* 11 *Car.* Judgment was given againſt the Plaintiff *quod nil capiat per billam.*

Hill. 11 *Car.* B. R. *Delamore* and *Heskins* Caſe, The Plaintiff declared, That there was a Suit in *B.* between the Defendant and one *S.* and that the Defendant pleaded to Iſſue, and that at the Tryal in *B.* the Plaintiff was ſworn as a Witneſs, and ſets forth his Oath, and afterwards the Defendant having Communication with the Wife of *S.* concerning the ſaid Tryal and Oath, ſaid theſe words of the Plaintiff, *Your Brother D.* (*innuendo* the Plaintiff *exiſtentem fratrem del' Feme*) *took a falſe Oath againſt me in the Hall* (innuendo &c.) *I would not take ſuch an Oath for all the world.* After *Not Guilty* pleaded, there was a Verdict for the Plaintiff; yet the Declaration is not good, becauſe that it is not averred, that the Plaintiff was Brother to the ſaid Wife of *S.* to whom the words were ſpoken.

Here *Note*, That although the Judgment given in *B.* was reverſed for Error in the Judgment, yet it was adjudged for the Defendant accordingly, *Trin.* 11 *Car. Rot.* 900.

The

The Court alſo ſaid, That the Averment in the *Innuendo* is not ſufficient; and without an Averment it is not good to ſay that the Defendant did ſpeak of the Plaintiff, although the Jury have found for the Plaintiff; *tamen quere rationem*: for there was another good cauſe for reverſing this Judgment, *ſc.* becauſe it was not averred that the Iſſue was joyned in any Tryal, but onely that at the Tryal the Plaintiff did Swear, &c.

Hill. 11 *Car.* in the Common Pleas; *A.* having communication of *John Potter*, ſaid theſe words, *That Perjured Rogue and Villain* Potter; without ſaying any other words; Adjudged, That *John Potter* ſhall have his Action for theſe words, alledging a communication of him, and that the Defendant ſaid theſe words of him without other Averment.

If *John Johnſon junior*, brings an Action upon the Caſe, averring, That the Defendant ſaid theſe words of him to one *John Johnſon ſenior*, *I will take my Oath that your Son ſtole my Hens.* Notwithſtanding the Plaintiff be the Son of him to whom the words were ſpoken, and the Plaintiff avers that the Defendant ſaid theſe words of him, yet the Action lyes not without an Averment that he is the Son of *John Johnſon ſenior* to whom the words were ſpoken. Adjudged *Mich.* 15 *Car.* B. R. Alſo in this caſe if he were not his Son, then the Plaintiff hath no cauſe of Action.

But

But if *Robert Nelſon* brings an Action upon the Caſe, and declares, That the Defendant (having communication with certain of the Kings Liege People concerning the Plaintiff) did ſpeak of the Plaintiff theſe words; *Captain* Nelſon (*innuendo* the Plaintiff) *is a Rogue and a Thief, and hath ſtollen away my goods, and I will prove him a Thief:* This is a good Declaration to maintain the Action, without any Averment that he was a Captain, or known by this name, although that there was a communication of the Plaintiff, and it be averr'd that the words were ſpoken of the Plaintiff, for there ſhall not be intended a plurality of *Nelſons*, Trin. 22 *Car.* B.R. *Nelſon* and *Smith*'s Caſe. *Note*, It being moved in Arreſt of Judgment, was adjudged.

The like Caſe was, *Mich.* 22 *Car.* B. R. between *Oſborne* and *Brooks*, *viz.* That the Defendant having communication with *J. S.* of the Plaintiff, ſaid of him, *Captain* Osborn *is forſworn, and his Oath is upon Record.*

In an Action upon the Caſe for words, if the Plaintiff declare, That the Defendant having communication of the Plaintiff with divers perſons, ſaid theſe words of the Plaintiff, *viz. Your Father* (meaning the Plaintiff) *hath ſtruck and killed* Nicholas Ruſſel. After Verdict for the Plaintiff, it was adjudged by the whole Court, That the Plaintiff ſhall not have Judgment upon this Declaration, becauſe it is not averr'd that the Plaintiff was Father

Father to him to whom the words were ſpoken, nor that he had a Son there at the time of the ſpeaking of the words, ſo that it is uncertain of whom the words were ſpoken; For without ſuch affirmation it is not ſufficient to ſay that he ſpoke thoſe words of the Plaintiff, *Burrows* and *Uſher*'s Caſe, *Hill.* 1652. Adjudged againſt the Plaintiff by the Court after Verdict for the Plaintiff, and entred *Trin.* 1652. *Rot.* 1037.

Trin. 17 *Car.* C. B. *A.* brought an action againſt *A.* for theſe words, *Thou haſt killed my brother (innuendo C. &c. fratrem &c. nuper mortuum)* adjudged the action would not lie, becauſe the plaintiff did not aver that he was dead at the time when the words were ſpoken; and it was ruled, that the *innuendo* was not a ſufficient averment.

The reaſon of theſe caſes, is, becauſe the death of the party is the ground of the action, and if hee were not dead (which ſhall the rather bee intended, without the plainttiff do expreſly aver him to be dead) then the plaintiff could not be indamaged by the ſpeaking of the words, and by conſequence no action will lie for them.

Paſch. 1. Jac. in the Kings Bench. Rot. 107.

I muſt confeſſe that I have a report of a Caſe which was 5. of *King James* adjudged againſt the former caſes, and the caſe was thus: Sir *Tho. Holt* brought an action againſt *Taylor* for theſe words, Sir *Tho. Holt* hath killed his Cook, &c. and did not aver that he had a Cook,

Cook, nor that the Cook was dead; and this was moved in arreſt of Judgment, and by the whole Court the Declaration was held good, becauſe it ſhall not be intended, that there is any ſuch purgation of the ſlander as this is, except it doth appear in the Record; as the life of a man, which is reported to be dead. But if it were expreſſed in the Record, that the party reported to be dead, was in life, it were otherwiſe.

As if words were ſpoken of a woman, that ſhe had murdered her husband, & ſhe and her husband bring the action, in this caſe the Action will not lye, becauſe that it doth appear by the Record, that the ſlander is not prejudiciall; but is purged notoriouſly, by the apparent being of the husband in life, like *Snags* caſe in my Lord *Cokes* 4 Book, *Quære tamen*; for I doubt Reader the Law of this caſe, becauſe of the caſes before adjudged. Coke lib. 4. fol. 19. a.

A. Saith that *B.* told him that *C.* ſtole a Horſe, theſe words with an averment that *B.* did not ſay any ſuch thing to *A.* will bear an action; like the Lady *Morriſons* Caſe which I have formerly cited.

Haſſelwood and *Garrets* caſe cited before, *Whoſoever is he that is falſeſt Thief, and ſtrongeſt in the County of* Salop, *whatſoever he hath ſtollen, or whatſoever he hath done*, Thomas Haſ- Paſch. 1. Jac. in th Kings Bench. Rot. [illegible]

ſelwood *is ſaller then he*; Reſolved that the words were actionable, with an averment that there were felons within the County of *Salop*; but for default of ſuch averment the Judgment given in the Common-Pleas was reverſed in this Court.

Note *Reader*, if there were no felons in that County (which will rather be intended, if it be not averred that there were ſome) then the ſpeaking of the words could be no ſlander to the Plaintiff, and ſo no Action can lie.

Hob. Rep. page 309.

Blands caſe cited before, he brought an action againſt *A. B.* for ſaying that he was indicted for felony at a Seſſions holden, &c. and did not aver that he was not indicted, and after a Verdict for the Plaintiff, Judgment was ſtayed beeauſe there was no Averment, *ut ſupra*. Note, if he were indicted, which he doth tacitly admit, then no cauſe of action.

Paſch. 7. Jac. in the Kings Bench.

One *Clark*, ſaid that he had a Son in *Nottinghamſhire* who had his Cheſt picked, and a hundred pounds taken out, of it, in one *Lock-Smiths* houſe; and I thank God I have found the Thief, who is one that dwelleth in the next houſe called *Robert Kingſton*: upon which *Kingſton* brought an Action, and had a verdict, and it was moved in Arreſt of Judgment, becauſe that he did not aver that he

he dwelt in the next house. *Croke*, One said that *Prichards* man robbed him, who brought an Action, and did not aver that he was *Prichards* man, and therefore it was held that the Action would not give Judgment.

Non constat in this case that the Plaintiff was the party of whom the words were spoken; for there might be another of the same name dwelling elsewhere, and therefore he ought to aver that he dwelt in the next house, that he may be certainly intended to be the same person of whom the words were spoken.

If a man brings an Action of the Case against another for speaking of him certain slanderous *Welsh* words, although that they be not put into English in the Declaration, yet the Declaration is good; for the Court ought to take Information by *Welsh-men* what the words signifie, *Hob.* Rep. 169. *Anonymus* Case adjudged, where is cited, *Trin.* 43 *Eliz.* 3024. between *William Verch Howell* and *Evan George* adjudged in the Kings Bench, and also *Pasch.* 44 *Eliz. Rotulo* 8034. adjudged.

Having proved the Grounds before laid down, and by several Cases *instructed you sufficiently, though briefly, where an* Innuendo *and an* Averment *will be necessary, and where not; I am now come to shew you where a Justification shall be good, and where not, in these few* Cases *following:*

In an Action upon the Caſe for words, it is a good Juſtification (though the words were falſe) for the Defendant to ſay, That he was a Councellor at Law retained in an Iſſue between the Plaintiff aud *J.S.* and that he did ſpeak the ſaid words in Evidence for his Clyent; if they were directly material to the Point in iſſue, *Mich.* 3 *Jac.* in the Kings Bench between *Brook* and *Mountague*, Reſolved by the Court.

Likewiſe the ſaid matter ſhall be a good Juſtification, although that the words were not preciſely pertinent to the Iſſue, but conſequently, and for mitigation of damages, *Mich.* 3 *Jac.* *ut ſupra.*

As in Falſe Impriſonment, if the Defendant plead in barr, That he was Mayor of *London*, and Impriſoned the Plaintiff untill he found Sureties for his good behaviour, being a man of evil fame, and geſture, to whom the Plaintiff replied, *De injuria ſua propria abſq; tali cauſa*, and a Counſellor at Law retained for the Defendant, upon the Information of his Clyent ſaid in Evidence, *That the Plaintiff was of evil behaviour, and that he had committed Felony*: In an Action upon the Caſe by the Plaintiff againſt the Counſellor for theſe words, he may well juſtifie the ſpeaking of them for the matter aforeſaid, (though they be falſe) notwithſtanding that they do not tend preciſely in proof of the Iſſue,

Iſſue, for they tend to purge a Magiſtrate and the courſe of Juſtich, and are material to mitigate damages, and they were ſpoken in malice. *Brook* and *Mountague ut ſupra.* Adjudged upon a Demurrer.

In an Action upon the Caſe brought by *Moulton* againſt *Clapham*, *Paſch.* 15 *Car.* in the Kings-Bench, Adjudged (in arreſt of Judgment after Verdict for the Plaintiff) That if *A.* declare againſt *B.* that he [the Plaintiff] did take his Oath in the Court of Kings-Bench againſt *B.* whereupon *B.* then ſaid falſly and malicioufly intending to ſcandalize him in the hearing of the Juſtices and Officers of the Court, and others there preſent, theſe ſcandalous words, *viz. There is not a word true in that Affidavit, and I will prove it by Forty witneſſes.* Yet this Action is not maintainable, for the anſwer which *B.* made to the ſaid *Affidavit* was a Juſtification in Law, and ſpoke onely in defence of himſelf, and that in a Legal and Judicial way, notwithſtanding that he ſaid that he would *prove it by Forty witneſſes.*

In an Action upon the Caſe for calling the Plaintiff, *Thief*, if the Defendant juſtifie by reaſon that the Plaintiff hath ſtole ſuch a thing, and the Plaintiff replyes, That after the Felony committed, and before the ſpeaking of the words, he was pardon'd by a General Pardon; this ſhall avoid the Juſtifica-

tion: for by the Pardon the Felony was extinct. *Hob.* Rep. 92. *b.* Cose 122. Adjudged in *Cuddington* and *Wilkins* Case.

The aforesaid Relation of *Fox* in his Book of Martyrs, of *Greenwood* of *Suffolk*, (cited also by my Lord *Coke*, *Mich.* 3 *Jac.* in the Kings-Bench) is reported to have perjured himself before the Bishop of *Norwich*, in testifying against a Martyr in the time of Queen *Mary*, and that afterwards he went home to his house, and by the Judgment of God his Bowels rotted out as an exemplary punishment of his perjury; *Prit* being newly made Parson of the Parish where this *Greenwood* did inhabit, and not well knowing his Parishioners, preaching against *Perjury*, cited this Story; and it chanced that *Greenwood* was living, and at the said Church, and afterwards brought his Action upon the Case against the Parson for these words; and it was adjudged by *Anderson* at the Assizes, that the Action is not maintenable, because that they were not spoken maliciously.

SOME

CASES Additional and Explanatory to the former.

MIch. 25 *Eli.* in *Banco Regis*, adjudged, if a man call another perjured man, or a procurer of perjury, an Action upon the Caſe lyes; but if he ſaith, that he is a falſe forſworn man, or that he is a Vermine of the earth, a falſe Brother, an Hypocrite in the Church; for ſuch words no Action will lye.

Mich. 25 *Eli.* in *B. R.* reſolved, that if a man bring an Action upon the caſe upon divers words, of which ſome are not ſufficient to maintain the Action, and upon ſome the Action well lyes, and the Jury aſſeſſe damages for all the words, this is a good matter in Arreſt of Judgment, for the Jury aſſeſſe damages as well for thoſe words for which the Action doth not lye, as for thoſe for which the Action lyes; but if they doe not aſſeſſe damages for the words which are not Actionable, or upon the Evidence this be ſhowne, that they doe not aſſeſſe damages for thoſe words, there 'tis otherwiſe.

Trin. 28. *Eli.* in *B. R.* if a man ſay of another that he is a man-ſlayer, and hath lain in wait to kill, adjudged an Action upon the caſe lyes for theſe words.

Hill. 32 *Eli.* in *B. R.* an Action upon the Caſe was brought for theſe words, Thou art a couſening Knave, for thou haſt ſold me a Saphir for a Diamond; and holden that it doth lye becauſe he was Goldſmith, and this is cauſe to impair him in his living; and ſo one ſayes to another, who lives by buying and ſelling, though that he is not a Merchant, That he is a Bankrupt, a good Action upon the caſe will lye; but if a man ſaith to a Taylor, That he is a couzening Knave, becauſe that he hath ſold to him a Chain for Gold where 'tis half Copper, and that he is a couſening Knave upon Record, and hath been impriſoned for couſening, no Action will lye.

Hill. 32. *Eli.* in *B. R.* Sir *Edward Haſtings* brought an Action upon the caſe againſt one for theſe words, Sir *Edward Haſtings* hath procured a perjured Knave to ſeek my blood; reſolved that the Action would not lye for thoſe words, for that they are too generall, and doe not touch him in ſpeciall; for he may ſo doe lawfully, for 'twas lawfull for him to ſeek his blood if he were an offender in Felony, Murder, or Treaſon; and he might procure one that was perjured to give evidence of the truth of ſuch Fact, and peradventure he had no knowledge of the perjury; but

but if he had ſaid, that he had procured one to be perjured, it had been otherwiſe. And a Caſe was cited, adjudged in the Kings Bench, where Mr. *Stanhop* brought an Action upon the caſe againſt one, who ſaid, he got his living by ſwearing and forſwearing; and adjudged that no Action will lye upon theſe words. So 'twas alſo adjudged that no Action will lye if one ſay of another, That he hath made falſe Records, and verifies them; but 'twas adjudged that an Action will well lye againſt one who ſaith of another, that he hath procured one to lye in wait to murder him.

Mich. 29. *Eli.* in *B. R.* a man ſaid of another, Thou art a Thief, for thou haſt cut off the Ear-marke of my Sheep, and ſet on thine own; no Action will lye for theſe words.

Hill. 29. *Eli.* in *B. R.* in an Action upon the caſe for words, for that the Defendant ſaid to a Coroner, Thou art a couſening Knave, and haſt couſened *I. S.* of his Land; adjudged that the Action would not lye for any of theſe words, being ſo general, but if he had touched him in any ſpeciall point of his office, then the Action would well have lain. And *Coke* ſaid that 'twas adjudged, that if a man ſay to one, Thou haſt robbed me, and haſt taken away my Evidence, that no Action will lye.

Mich. 40. & 43. in *Eli.* in *B. Com.* an Action upon the caſe was brought by a Woman againſt the Portreive of Graves-Inn in Kent for

for these words; Thou keepest a House of Bawdry, and the Jury gave four pence damages; but the Justices would not have any Judgement entred for the Plaintiff, but bid her goe to the Bawdy Court, which understood what Bawdry was, for they did not. Yet Reader you shall find here immediately after that it hath been often adjudged in this case that the Action would lye, where one sayes of a Woman, that she keeps a Bawdy House; and certainly there is no difference where one sayes of a Woman, that she keeps a House of Bawdry, and where one saies that she keeps a Bawdy-house: And the difference is as you shall finde, between saying of a woman that she is a Bawd, and saying, that she keeps a Bawdy-house.

Read against Saul

Mich. 40 & 42. *Eli.* in *B. B. Yelverton* moved in Arrest of Judgement for these words; I heard it spoken that the Plaintiff was one of them that was at *Purvells* Robbery, and that four of them went to his house next morning; for it may be he was of *Purvells* side, or came by chance, and vouched Sir *Edward Hertberties* case in the Kings Bench; Sir *Edward Hertberty* sought my blood (see the like case before) whereupon Judgment was stayed after Verdict, for the Court said there, that it might be that he sought it by Indictment, or due course of Law. And another case there for these words; There is not a purse cut within forty miles of *London*, but the Plaintiff hath his share in it; adjudged not

Sir Edw. Herberties Case.

Actio-

Actionable, for the Court ſaid, that it might be that part of the Money was his. *Walmeſley, Juſtice.* We had a caſe here which was this; one ſaid of another, That he was a receiver of Thieves, and adjudged not actionable, for it may be that he might doe ſo and not know it. *Anderſon* Chief Juſtice. where the words have a double conſtruction, we may as ſoon doe wrong as right, and therefore we ought to give no Judgment in ſuch a caſe unleſſe we will doe it ignorantly, which is a great fault in a Judge; therefore let Judgment be ſtayed untill the Plaintiff ſhew cauſe. *Williams* prayed Judgment for the Plaintiff in the caſe of *Megge* againſt *Griffith* for theſe words; A woman told me ſhe poyſoned her firſt husband, adjudged Actionable. *Cardinalls* caſe of Graies Inn; If I had conſented to *Cardinal*, *I. S.* had been diſpatched out of the way; this was much ſtood upon, and yet Judgment was given for the Plaintiff. Another caſe was this, one brought an Action for theſe words, He ſought my innocent blood (which I believe was *Hertberties* caſe before cited) 26. of the Queen adjudged that the words were Actionable, and after Judgment was given in the principall caſe for the Plaintiff, and 'tis ſaid by the Reporter, that the damages being a hundred pound, were mitigated by the Judges to fifteen pound which he accepted and well he might. For my part Reader, though I had this caſe from a good hand, yet for the reaſon given by the other ſide I am doubt-

Megge againſt *Griffith.*

Cardinalls Caſe.

doubtfull of it; and ſo upon the ſame ground of *Hertberties* Caſe before cited, and that not without ground, for *Haſtings* caſe before cited (if I miſtake not) is the ſame in effect with this, and adjudged point blank contrary; and ſo *Hext* and *Yeomans* caſe, *Paſch.* 26. of the Queen in the Kings Bench, *Coke*, *Lib.* 4. for my ground in *H. Hext* ſeeks my *life*; adjudged not Actionable upon the reaſon given before.

Hext and Yeomans Caſe.

Hill. 41: *Eli.* in *C. B.* an Action was brought by a Merchant for theſe words, Thou art a couſening Knave, and a Banckrupt Knave, *Ac eadem verba, aut alia iis ſimilia ſæpius repetuit. Daniel* moved in Arreſt of Judgment, but by the Court the firſt words were Actionable, and ſuch damages as are given are alwaies ſuppoſed to be given for the materiall words; and the repetition is voyd. But for my part (Reader) I am ſomewhat doubtfull, whether the words thus layed be Actionable or not; for without doubt upon the laſt words, (*aut alia iis ſimilia*) other words then the words layed in the Declaration cannot (upon a not guilty pleaded) be given in evidence, and the latter words makes the former words to be incertain; for if a man ſhall bring an Action for words which are Actionable, as for ſaying that he called him Thief, or, *verba iis ſimilia*, certainly no Action will lye for the incertainty; but to this 'twill be ſaid, 'tis true in the latter Caſe, but in the Caſe at Barr the former

former words are positively alleadged before in the Declaration, and the latter words are only words of repetition.

Trin. 41. *Eli.* in *C. B.* an Action upon the case was brought by *Huntson* against the Bishop of *Ely*, for publishing that he was his Villain; the Bishop justified the speaking of the words, afterwards the Bishoprick came to the Kings hands for contempt, and I finde no further proceeding in the case; and the reason is evident, because that he pretends title to him as his villain. And agreeing with this are the Books cited before, but *a fortiori*, I conceive at this day no Action will lye, because Villinage at this day is obsolete and out of use, and therefore can be neither prejudice nor scandall to a man. *Huntson against the Bishop of Ely.*

Mich. 41. & 42. *Eli. C. B.* It was holden by the opinion of the whole Court (*Anderson* absent) and so adjudged, that an Action upon the case will not lye against an Indicter of Felony, albeit the Felon be found not guilty; for *Glanvil* then said, that it would breed a great mischief in the Common-Wealth, if it should be suffered, and many an honest man should be punished, when a Thief should escape hanging by the favour of the Jurors. Upon this difference this Judgment (as you shall finde afterwards) is Law, where the prosecution was out of malice, where not; for though the prosecution be lawful, yet if it be out of malice, and not so much as *probabilis causa* for it, if the party be acquitted, an Acti- *Sherrington against Ware.*

on

on upon the caſe in nature of a conſpiracy will lye; for as a Thieſe may be ſpared by the favour of the Jurors, ſo an honeſt man may be very much prejudiced in his reputation by ſuch malicious proſecution; and this is the common experience at this day.

Mich. 41. & 42. *Eli. C. B. Williams* moved in Arreſt of Judgment for theſe words; Thou art a forſworn Knave, thou wert forſworn at *Ilcon* Court (*innuendo*) the Court Leet there holden; and he moved that the Plaintiff by his (*innuendo*) ſhould be no expounder of the Defendants meaning, neither that it ſhould ſtretch the words further then they were ſpoken, which the Court agreed; and then he ſaid the words will bear no Action. *Walmeſly* Juſt. thou art a perjured man will bear an Action, *contra* of forſworn, unleſſe he name *Weſtminſter Hall*, or ſome ſuch place where it ſhall be intended by the hearers, that he was forſworn in ſome Court. *Williams* there was this caſe in the *Kings Bench*, Thou art a forſworn man, thou wert forſworn in *White-Church* Court, and the *Kings Bench* adjudged them not Actionable. The Court, we doubt of this caſe, and all the Serjeants ſaid, that truly 'twas ſo adjudged. *Anderſon*, If one call my Copy-holder a forſworn man, for he denyeth my rent or ſervice, I think this ſhall bear Action, but the *innuendo* is naught, for 'tis not traverſable. *Walmeſly* Juſtice. One of you forged a *Subpœna* out of the Chancery (*innuendo*) the Plaintiff, Judgment was ſtay-

ed

ed for this, becauſe he which is grieved ought to be certainly defamed. *Williams*, Thou art, &c. thou wert forſworn in the *Kings Bench*, no Judgment was given, becauſe it may be intended to be the Court or Priſon; but after Judgement was given in the principall caſe for the Plaintiff, agreeing with thoſe caſes which I hrve cited; and 'twas ſaid in this caſe, that 33. *Eli.* one *Gardiner* of *Southwarke* had Judgement for theſe words; Thou art a forſworn Knave, upon divers motions againſt him which without queſtion cannot be Law, for 'tis point blank againſt the Judgement in *Stanhops* caſe, in my Lord *Coke* often cited by me, and according to my Lord *Coke* it hath been often adjudged.

Paſc. 42. *Eli.* in *C. B. Williams* moved in Arreſt of Judgement for theſe words; *A. B.* told me, that *Dicke* the Hoſtler and he ſtole ſuch a mans Horſes, for which he brought an Action, but did not alledge in his Declaration, *Ubi revera*, *A. B.* did not ſay ſo, and he ought to aver that, or elſe the Action will not lye, for here was ſuch a caſe in 10. *Eli.* in a *ſcandalum Magnatum*, by the Lord *Lumley* much argued, I find no Judgment in the caſe; but cerrainly the Law is with *Williams*, for without doubt if *A. B.* had told the Defendant ſo, the Action would not lye. Such averment you ſhall find taken in the Lady *Morriſons* caſe cited by me, the reaſon of the

Monde against Skebington.

the neceſſity of ſuch averment is evident, becauſe without it he tacitly admits that *A. B.* did tell the Plaintiff as is ſet forth, and againſt his own admiſſion no Action.

Coke b.4. Trin. 41. *Eli. Oxford* and his Wife brought an Action in *London* for calling the Wife of the Plaintiff Whore, the Defendant removed this out of *London* by a *Habeas Corpus*; a *Procedendo* was prayed, becauſe the Action was maintainable in *London* by the cuſtome there for the ſaid words, though not at the Common Law; by the Court he ſhall not have a *Procedendo*, for ſuch cuſtome to maintain Actions for brawling words is againſt the law; Under favour, and with all due reſpect to this Judgment, the reaſon to me ſeems very ſtrange, for why this cuſtome ſhould be more againſt Law then their cuſtome of forreign Attachment, their cuſtome to Arreſt the Debtor upon Bond before the day of payment, to put in better ſecurity, and many other ſuch like cuſtomes which are daily allowed to be lawful, I know no reaſon.

And *Trin.* 17 *Car.* in B.R. A man was ſued in *London* according to the Cuſtom there for calling of a Woman *Whore*, upon which a *Habeas Corpus* was brought in this Court, and notwithſtanding *Oxford*'s Caſe, a *Procedendo* being prayed was granted: And it was ſaid by Serjeant *Pheſant*, who was for the

Proce-

Procedendo, (and ſo agreed by *Mallet*, Juſtice, and *Bramſton* Chief Juſtice, That of late there had been many *Procedendo's* granted in this caſe in this Court.

An Action lyes in *London* by the Cuſtome for theſe words ſpoken of a Woman, *ſcilicet*, *Thou art a Whore, and wilt play the Whore for two pence*; For in *London* ſuch a Woman ſhall be Carted. *Mich.* 13 *Caroli primi* in the *Kings-Bench*, between *Bavoir* and his Wife and *Cooper*. By the Court after an *Habeas Corpus* and a *Procedendo* granted, a *Superſedeas* was denyed: But *Barkley* was of a contrary Opinion, becauſe *Coke lib.* 4. *Oxfords* Caſe is to the contrary; and therein theſe Preſidents were vouched, *ſc.* between *Bond* and *Watſon*, *Trin.* 8 *Caroli primi* in the *Kings-Bench*, a *Procedendo* was granted for the like words, and a *Superſedeas* denyed by the Court. And the Court ſaid in this Caſe, That if Judgment be given in *London* in this Action, a Writ of Error lyes in which the Law may be denied, and therefore it is not reaſonable to grant a *Superſedeas* to ſtay the Suit there. *Trin.* 1650. between *Penton* and *Harriſon*, adjudged *per totam Curiam*, and a *Prohibition* granted accordingly, where the words were, *Thou art a Whore, and my Husband's Whore.*

In an Action of the Caſe for ſcandalous words ſpoken of the Plaintiff's Wife, *viz.* *Thou art a Bawd*; *Thou art the Bawd of*

Bawds; *Thou keepeſt a Bawdy-houſe, and art a Bawd to thine own Daughter.* The Plaintiff declared, That he keeping a publique Victualling-houſe loſt his Cuſtome: Whereupon the parties being at Iſſue, the Jury found for the Plaintiff, and 5 l. Damages given: At the day in Bank the Defendant moved in Arreſt of Judgment, *et per totam Curiam* the words were not Actionable, for that they were ſpoken of the Plaintiff's Wife, whoſe Husband (and not ſhe) kept houſe; and therefore it was agreed, it could be no damage to him: And Judgment was ſtayed accordingly, *Trin. 16 Caroli Secundi in Communi Banco.*

Libels.

Libels.

READER,

I Have here added to *Actions for Slander*, certain Caſes which have been adjudged touching *Libels* and *Libellours*, (a Learning to the ſame purpoſe, and as worthy the knowing as the former) a thing deteſtable to all good and peaceable men, and utterly againſt the Word of God, as I ſhall make appear hereafter. That I may therefore deter men from this unconſcionable and diſhonourable way of Libelling, a thing ſo dangerous to the Peace of this Kingdome, and ſo deſtructive to all ſettled Government; I ſhall produce you certain Caſes that have been adjudged by the Learned Judges and Sages of the Law upon Libels, by which you may ſee the hainouſneſs of the crime, your own danger, and know the better how to avoid it. To which I ſhall likewiſe add what defamations are determinable in the Eccleſiaſtical Court, and what not.

Coke l. 5. fol. 225.

Paſch. 3 Jacobi, in the Caſe of *L. P.* in the Star-Chamber in the ſame Term, againſt whom the Kings Attorney proceeded upon his own confeſſion *Ore tenus*, for compoſing and publiſhing of an infamous Libel in Meeter; by which *John* Archbiſhop of *Canterbury* (who was a Prelate of ſingular Piety, Gravity, and Science, then dead) by deſcriptions, and circumlocutions, and not in expreſs terms; and *Richard* Biſhop of *Canterbury* that then was, were traduced and ſcandalized; in which caſe theſe Points were reſolved:

Firſt, That every Libel (which is called, *Famoſus Libellus ſeu infamatoria Scriptura*) is made either againſt a private man, or againſt a Magiſtrate, or publique perſon; if it be made againſt a private perſon, it deſerves a ſevere puniſhment, for though that the Libel be made againſt one only, yet this incites all thoſe of the ſame Family, Kindred, or Society, to revenge, and ſo tends by conſequence to quarrels, and breach of the Peace, and may be the cauſe of the effuſion of blood, and of great inconvenience. If it be againſt a Magiſtrate, or other publique perſon, this is a greater offence, for this concerns not onely the breach of the Peace, but the ſcandal of Government; for what greater ſcandall of Government can there be then to have corrupt or wicked Magiſtrates to be appointed, and conſtituted by the King to govern his Subjects under him? and a greater

greater imputation to the State cannot be, then to permit ſuch corrupt men to ſit in the Sacred Seat of Juſtice, or to have any medling in or concerning the adminiſtration of Juſtice.

Secondly, It was Reſolved, That though the private man or Magiſtrate be dead at the time of the making of the Libel, yet this is puniſhable; for in the one caſe this incites others of the ſame Family, Blood or Society to revenge, and to break the Peace; and in the other the Libeller traduces and ſlanders the State and Government, which doth not dye.

Thirdly, It was Reſolved, That a Libeller (who is called, *Famoſus defamator*) ſhall be puniſhed either by Indictment at Common-Law, or by Bill if he denyes it; or *Ore tenus* upon his own confeſſion in the Star-Chamber, and according to the quality of his offence he may be puniſhed by Fine, or Impriſonment; and if the Caſe be exorbitant, by Pillory, and loſs of his Ears.

Here by the way I would have every one take notice, That though the Star-Chamber be taken away, yet that this vile and deteſtable offence is not left diſpuniſhable; And I would likewiſe have all men obſerve (eſpecially in theſe times, in which Libells and Libellers ſo much abound, to the great diſhonour of our Nation, and to the diſturbance

of our Peace and Government) what a great and defamatory puniſhment anſwerable to the offence, the Law inflicts upon ſuch Offenders: But I ſhall return again to the Caſe.

Fourthly and laſtly, That it matters not if the Libel be true, or if the party againſt whom it is made be of good fame, or of an ill fame; for in a ſetled ſtate of Government the party grieved ought to complain for every injury done unto him in ordinary courſe of Law, and not by any means to revenge himſelf, either by the odious courſe of Libelling, or otherwiſe.

And to aggravate the offence, it is ſaid as followeth in this caſe; That he that killeth any man with the Sword in Combate is a great offender; but a greater offender is he that poyſoneth another; for in the one caſe, he that is openly aſſaulted may defend himſelf, and knowes his Adverſary, and may endeavour to prevent it; but poyſoning may be done ſo ſecretly that no man can defend himſelf againſt it, for which cauſe the offence is the more dangerous, for that the offender cannot eaſily be known. And of ſuch nature is Libelling, it is ſecret, and deſpoyles a man of his fame (which ought to be more precious to him then his life) and *difficillimum eſt invenire Authorem infamatoriæ Scripturæ*, and therefore when the offender is known, he ought to be ſeverely puniſhed.

Further,

Further, in this caſe you have ſet forth the difference of Libells, and how many ſeverall waies they may be puniſhed.

Every infamous Libell, *aut eſt in ſcriptis, aut ſine ſcriptis.* A ſcandalous Libell *in ſcriptis* is, when an Epigram, Rime, or other writing is compoſed or publiſhed to the note or contumely of another, by which his fame or dignity may be prejudiced; and ſuch Libell may be publiſhed, 1. *Verbis aut cantilenis*, as where this is malitiouſly repeated, or ſung in the preſence of others. 2. *Traditione*, when the Libell, or any Copy of it is delivered over to ſcandalize the party, *Famoſus Libellus ſine ſcriptis* may be; Firſt, *Picturis*, as to paint the party in any ſhamefull and ignominious manner. 2 *Signis*, as to fix Gallows, or other reproachfull and ignominious ſigns at the Houſe of the party, or otherwiſe.

And it was reſolved, Mich. 43. & 44. of the Queen in the Star-Chamber in *Halliwoods* caſe; That if any one find a Libell (and would preſerve himſelf out of danger) if it be compoſed againſt a private man, the finder either may burn it, or preſently deliver it to a Magiſtrate; but if it concern a Magiſtrate, or other publique perſon, the finder ought preſently to deliver it to a Magiſtrate, to the intent that by examination and induſtry the Author may be found and puniſhed.

Now I ſhall make it evident to you, that Libellings and Callumniation is an offence againſt the Law of God, for *Leviticus* 17.

Non

Non facias calumniam proximo, Exodus 22. Verſe 28. *Principi populi tui non maledices*, Eccleſiaſtes 10. Verſe 20. *In cogitatione tua ne detrahas Regi, nec in ſecreto cubiculi tui diviti maledices, &c.* Pſal. 68. 13. *Adverſus me loquebantur qui ſedebant in porta, & in me pſallebant qui bibebant vinum.* Job 30. Verſe 7. & 8. *Filii ſtultorum & ignobilium, & in terra penitus non parentes, nunc in eorum canticum verſus ſum & factus ſum eis in proverbium.* And it was obſerved that *Job*, who was the mirrour of patience, as it doth appear by his intemperate words, became in a manner impatient, when Libells were made of him; and therefore it doth appear how forcible this is to provoke impatience and contention.

And now Reader there are certain Notes (as is obſerved in the cloſe of this caſe) by which a Libeller may be known; *Quia tria ſequuntur defamatorum famoſum*: 1. *Pravatis incrementum*, increaſe of lewdneſſe; 2. *Burſe decrementum*, evacuation of the Purſe, and beggery: 3. And laſtly, *Conſcientiæ detrimentum*, ſhipwrack of Conſcience. Thus I have given you the caſe at large, full of excellent learning and directions, and well worth the knowing to the people of this age.

John

John Lambs Caſe.

JOhn *Lambe*, Proctor of the Eccleſiaſticall Court, exhibited a Bill in the Star-Chamber againſt *William Marche*, *Robert Harriſon*, and many others of the Town of Northampton, and againſt *Shucburghe* and others for the publication of two Libells, and in this caſe it was reſolved: That every one that ſhould be convicted in the ſaid caſe, either ought to be a contriver of the Libell, or a procurer of the contriving of it, or a malicious publiſher of it, knowing it to be a Libell; for if one reads a Libell, this is not any publication of it; or if he hear it read, this is not any publication of it; for before that he reads, or hears it, he cannot know it to be a Libell; or if he doth hear it, or read it, and laughes at it, this is no publication; but if after that he hath read or heard it he repeates it, or any part of it in the hearing of others; or after that he knows it to be a Libell he reads this to others, this is an unlawfull publication of it; or if he doth write a Copy of it, and doth not publiſh it to others, this is no publication of the Libell, for every one that ſhall be convicted ought to be a contriver, procurer, or publiſher of it, knowing it to be a Libell. But it is a great evidence that

Mich. 8. *Ja.* in *Cam. Stellat.*

that he publiſhes it, when he knowing it to be a Libell writes a Copy of it, except that afterwards he can prove, that he delivered it to a Magiſtrate to examine it; for then the act ſubſequent explainee his intention precedent.

See Reader, *Bracton, Lib. 3. tract de corona, cap. 36. fol.* 155. *Fiat not ſolum injuria, cum quis pugno percuſſus fuerit, verberatus, vulneratus, ſeu fuiſtibus cæſus; verum etiam cum ei convitium dictum fuerit, vel de eo factum carmen famoſum.*

Here Reader, as in the caſe before, you are taught what ſhall be a publiſhing of a Libell, and what not; and hence you are inſtructed how to demean your ſelf in caſe a Libell ſhould come to your hands, of which you were neither the contriver, nor the procurer, of which you ought to take ſpeciall heed; for that not only contrivers and procurers of Libells, but alſo publiſhers of the ſame, they knowing of them to be Libels, are puniſhable as aforeſaid.

Barrow againſt Lewelin.

PAul *Barrow* preferred a Bill in the Star-Chamber againſt *Maurice Lewellin*, for writing unto him a ſpightfull and reproachfull Letter, which being brought, it appeared to the Court that it was ſealed and delivered to his own hands, and never otherwiſe publiſhed; and it was reſolved, though the Plaintiff in this caſe could not have an Action upon the caſe becauſe it was not publiſhed, and therefore that it could not be to his defamation, without his own fault of divulging of it; and all Actions of that kind doe ſuppoſe, that in *auditu quam plurimorum protulit, &c.* yet that the Star-Chamber for the King did take knowledge of ſuch caſes, and puniſh them; the reaſon is, for that ſuch quarrellous Letters tend to the breach of the Peace, and to ſtirring up of challenges and quarrels, and therefore the means of ſuch evill, as well as the end are to be prevented. Hob. Rep. pa. 86. pl. 63. Sir *Baptiſt Hicks* caſe; Paſch 16. Ja. in *Cam. Stellat.* rule accord.

I conceive Reader, that a man in the caſe aforeſaid cannot be Indicted at the Common Law, becauſe there is no publiſhing of it to the defamation and ſcandall of the party, and that which may be the occaſion of quarrels is not a ſufficient ground for an Indictment, without

without an actuall breach of the Peace, no more then a man could be Indicted for ſending a challenge to another, which yet was frequently puniſhed in the Star-Chamber at the Suit of the King.

Reader, it is worthy of thy ſerious conſideration that it is in the firſt caſe reſolved, that it matters not whether the Libell be true, or whether the party againſt whom it is madebe of good fame, or of ill fame; and the reaſon is, becauſe that a Libell cannot be juſtified. And accordingly was the opinion of my Lord *Hobbart*, in *Lake* and *Hattons* caſe, where he ſaith expreſly, that a Libell, though the contents be true, is not to be juſtified, but to diſcover it legally to ſome Magiſtrate or other that may have Cogniſance of the cauſe is the right way, but ſaith he, it may be juſtified in an Action upon the caſe, and thus much for Libels.

Hob. rep. p. 353. Sect. 334.

Defama-

Defamations determinable in the Eccleſiaſtical Court.

THis being a Learning dependent upon the former, and indeed the ſame, only varying in the Juriſdiction, I thought good to give you a touch of it, in which I ſhall cite you only a Caſe or two which have been adjudged, which will be as a Rule to all other Caſes of this Nature.

Trin. 25 of the Queen in the *Kings-Bench*, between *Palmer* and *Thorpe*, it was Reſolved, That defamations determinable in the Eccleſiaſtical Court, ought to have theſe three incidents: 1. That it concern matter meerly Spiritual, and determinable in the Eccleſiaſtical Court, as for calling a man Heretick, Schiſmatick, Adulterer, Fornicator, &c. 2. It ought to concern a matter meerly ſpiritual only; for if ſuch defamation touch or concern any thing determinable at Common Law, the Eccleſiaſtical Judge ſhall not have Conuſance of it. 3. Though that ſuch defamation be meerly ſpiritual, and only ſpiritual, yet he which is defamed cannot ſue there for amends or damages, but the Suit ought to be only for puniſhment of the fault, *pro ſalute animæ*. Coke lib. 4. fo. 20. *A. B.*

And

And as to the first and second ground, the Case in 22 *E.* 4. was cited to this effect; the Abbot of St. *Albans* sent his servant to a Feme Covert to come to his Master, and to speak with him; the servant performed his command, and upon this the Woman came along with him to the Abbot, and when the Abbot and the Woman were together, the Servant (who knew the will of his Master) withdrew himself from them, and permitted them two to be alone in the Chamber, and then the Abbot said to the Woman, That her Array was gross Array; To which the Woman said, That her Array was according to her quality, and according to the ability of her Husband: and the Abbot (knowing in what Women repose their delight) said to her, That if she would be ruled by him, that she should have as good Array as any Woman in the Parish; and sollicited her chastity: when the Woman would not consent to him, the Abbot assaulted her, and would have made her nought against her will,; the which the Woman would not suffer: upon which the Abbot detained her in his Chamber against her will, and to the intent &c. The Husband having notice of this abuse to his Wife, spake of all this matter, and said, That he would have his Action of false imprisonment against the Abbot, for that he had imprisoned his Wife: upon which the Abbot (adding one fault to another) sued the innocent

cent and poor man for defamation in Court Chriſtian, for that the Husband had publiſhed, That the Abbot had ſollicited the Chaſtity of his wife, and would have made her nought.

But upon all this matter diſcloſed to the Court, the Husband had a *Prohibition*, becauſe that the Husband might have had an Action at the Common Law, for the aſſault and Impriſonment of his Wife, that then he had not any Action, nor peradventure ever would; yet becauſe that the ſcandal determinable in the Eccleſiaſtical Court was upon all the matter diſcloſed, and mixt with matter determinable at Common Law, for this cauſe upon Motion made by the Counſel of the Abbot to have a Conſultation in this Caſe, it was denied by the Court.

See 18 E. 4. 6. 12 H. 7. 22. *Regis*, *ver'* 46, 47. & 54.

As to the third ground before laid down, ſee the Statute *De Articulis, Cler. cap.* 1, 2, 3. and the Statute *De Circumſpecte Agatis, Anno* 13 E. 1. and *F.N.B.* 51. *J. K.* 52. *D. M.* 53. *A. F.* it appears there, That if a Parſon ſue in Court Chriſtian for laying violent hands upon him, and to have the party Excommunicated, or a corporal puniſhment, and not for damages or amends, that in ſuch caſe the Eccleſiaſtical Court hath Juriſdiction, but the Plaintiff may recover Coſts there; and if the Defendant in caſe of defamation be put to a corporal puniſhment, either for laying

ing

ing violent hands upon Clerks, or the like; if the party will redeem his Penance, and agree to pay the party damnified a certain ſum of money, there the party damnified ſhall have his Suit for it in the Court Chriſtian, and no Prohibition lyes.

22 E. 4. tit. Conſultation. 5. *Corbets* Caſe. *Coke* lib. 7. fo. 44. *A. Kemes* Caſe.

According to the reſolution aforeſaid, it is reſolved in 22 *E.* 4. *Corbets* Caſe, That when the Spiritual Court ſhall have Juriſdiction, it behoves that all the cauſe be Spiritual; as if a Parſon Libel againſt a Layman for Tythes imported, the Temporal Court ſhall have Juriſdiction, for this is mixt with the Temporalty.

Where an Action of the Caſe will lye for words of which the Spiritual Court hath Cognizance; and where not.

IF a man ſay to another, *Thou art a Whoremaſter*; or to a Woman, *Thou art a Whore*; No Action will lye for this, becauſe it is meerly Spiritual, without any Temporal loſs, *Trin.* 11 *Jac.* B.R. *Matthew* and *Croze*'s Caſe, *per Curiam.*

So for one married man to ſay of another, *He hath had a Baſtard Thirty ſix years agon, and he ſhould pay for keeping it*; No Action lyes for theſe words, although it be averred, that by the ſpeaking of them there was a conten-

intention between him and his Wife, and that he was in danger to be divorced, for there is no temporal damage. *Pasch.* 16 *Jac.* B. R. *Randall* and *Beales* Case, adjudged in Arrest of Judgment.

But if a man do say of a Woman, That *J. S.* did beget her with Child, and she had a Child by him; by force of the speaking of which words she lost a Marriage with *J. D.* although these words be a spiritual slander, yet the loss of Marriage is Temporal, and therefore the Action lies for them, *Co.* 4. 16. *b. Davis* and *Gardeners* Case adjudged.

Mich. 16 *Car.* B. R. *Barnabas* brought an Action of the Case against *Traunter*, and declared, *That whereas he was a Parishioner of S. the Defendant being Vicar there, to the intent to scandal him, and cause his Neighbours to have an ill opinion of him, so that they might withdraw themselves from his* (the Plaintiffs) *Society, tanquam ab homine excommunicato & nulla fide aut credentia, digno*, and to exclude the Plaintiff unjustly from the Church, and for a great while to deprive him of all benefit of hearing Divine Service in the said Church, The Defendant in the time of Divine Service in the Church in the hearing of the Parishioners, maliciously pronounced the Plaintiff Excommunicate *pretextu cujusdam Instrumenti* by him received of the Ordinary, whereas he had not

any ſuch Inſtrument of Excommunication, nor was he Excommunicate. And alſo at another time to the ſame intent aforeſaid in the time of Divine Service in the hearing of the Pariſhioners, maliciouſly pronounced the Plaintiff excommunicate, and refuſed further to celebrate Divine Service, untill the Plaintiff departed out of the Church, by which the Plaintiff was compelled to go out of the Church; whereas the plaintiff was not Excommunicate, by which the plaintiff was ſcandalled, and hindred from hearing Divine Service for a long time; and for the clearing of this ſcandal, and of his innocency therein, *diverſos corporis ſui grandes labores capere, et diverſas ingentes denariorum ſummas errogare et exponere coactus fuit in extremam depauperationem et ignominium maximum* of the plaintiff; Adjudged that the Action lies, although the plaintiff doth not ſhew that any man did avoid his company, or refuſed to Trade or deal with him, nor alledged any temporal or ſpecial damage; for it is a great ſcandal and malicious, notwithſtanding it be ſpiritual, and concerns his Soul.

Owen brought an Action of the Caſe for ſcandalous words againſt *Jevan*, and declared, that the Defendant ſaid theſe words of her (the Plaintiff) being a Feme ſole the day of 1650. *This is that Whore that my Man A. got a Baſtard by, and withall ſpent all my money*; And being asked by another perſon

perſon ſtanding by, Whether he were not miſtaken, for the Maid hath been a little above a year in Town: The Defendant replyed, *The Queen hath been too long to my coſt.* Adjudged that no Action lies for theſe words; for to ſay that a Woman hath a Baſtard, is no cauſe of Action. *Trin.* 1651.

Trin. 16 *Jac.* B.R. Adjudged in Sir *John Tasborough's* Caſe upon moving in Arreſt of Judgment, That no Action lyes for theſe words, *He was the true Patron of the Advowſon of S. but he hath loſt that Patronage and Preſentation, by being a Simoniſt, and a Recuſant, both which I will prove him to be*; for by the *Simony* onely comes the loſs of the Preſentation *pro hac vice* by the Temporal Law, and the *Recuſancy* only touches him in Religion; for it doth not appear that he intended him to be a Recuſant according to the Statute.

Arbitrement.

THE next Thing, *Reader*, that I have undertaken to diſcourſe of, is, *Arbitrements*, the learning whereof will be very uſeful to all men; in regard that Compremiles or Arbitrements were never more in uſe than now. And moſt men either have been or may be Arbitrators; or at leaſt have done, or may ſubmit themſelves to the Arbitration of others. And as long as Differences and Contentions ariſe among men, which will be to the Worlds End, certainly the learning of Arbitrements will well deſerve our Knowledge. Which being well obſerved and learnt by all men, will be a good means to prevent many Suits and Contentions in the Law for the future, which are now daily occaſioned through the defects of Arbitrements, which rather beget and raiſe new Controverſies amongſt the parties, then determine the old. The only cauſe

whereof, is the ignorance of men in this learning. The Compoſer hereof, *Reader*, took this pains, onely out of a deſire of the common good, that none might be ignorant of that which concerns all. And if it ſhall effect that for which it was made, the inſtructing of the Ignorant, and the good of the Publike, the Author hath his ends, and abundant Recompence for his Labour. Which that it may accompliſh, is the earneſt and affectionate deſire of the True Servant to the Pubqnle,

JOHN MARCH.

In

IN my Lord *Dyer* it is ſaid, that to every Award, there are five things incident. Trin 4. of the Queen Dyer. fo. 217. pl. 60.

1. *Matter of Controverſie.*
2. *Submiſſion.*
3. *Parties to the Submiſſion.*
4. *Arbitrators.*
5. *Rendring up of an Arbitrement.*

Reader, my purpoſe is (God willing) to proſecute every one of theſe parts or incidents of an award [though peradventure not in the order before ſet down] conceiving them to be as exact a diſcription or delineation of thoſe things that are requiſit to every award, as poſſibly can be made: And indeed, reaching to all the caſes in the Law, which do principally and chiefly concern Awards or Arbitrements.

Firſt, then there muſt be a matter of debate, queſtion, and controverſie.

Secondly, this matter of debate, queſtion, and controverſie, muſt be ſubmitted.

Thirdly, there muſt be Parties to the ſubmiſſion.

Fourthly, there muſt be Arbitrators, to whom the matter in controverſie muſt be

ſubmitted. And laſtly, the Arbitrators muſt make an award or an Arbitrement.

Upon the ſeverall branches, I ſhall raiſe ſeverall queſtions, and debate and clear them as I go; And firſt,

Who may ſubmit to an Arbitrement, and who not?

I Take this to be regularly true, that no perſon, which is not of ability in judgment of Law to make a grant, *&c.* can ſubmit himſelf to an Aabitrement.

As men Attainted of Treaſon, Felony, or a Præmunire, Ideots, madmen, a man deaf, dumbe, and blind from his Nativity, a Feme Covert, an infant, a man by dureſſe for a ſubmiſſion to an Arbitrement muſt be *Spontanea voluntate*. Perſons Outlawed; for they have no Goods: a Dean without the Chapter, a Major without the Commo-nalty; the Maſter of a Colledge or Hoſpitall without his Fellowes, or the like. All theſe as they are incapable, to grant, ſo I conceive, that they are not of capability to ſubmit to an Arbitrement, but that the ſubmiſſion will be abſolutely void in theſe caſes.

The reaſon of theſe caſes may be, becauſe that they have no power of themſelves to diſpoſe of their intereſt or property, and therefore they cannot transfer ſuch power over to another; for the rule is, *quod per me non Poſſum, nec per alium.* And

And *Hill.* 15. of this King in the Kings Bench, betwixt *Rudſton* and *Yates*, it was adjudged, that the ſubmiſſion of an Infant to an Arbitrement was abſolutely voyd. Hill. 15. Car. in the Kings Bench. Rot. 318. ſee 14 H. 4. 12. 10 *H.* 6. 14.

But now on the other ſide, I conceive that all perſons whatſoever that are not fettered with theſe naturall or legal diſabilities; but are of capicity to make a grant, that ſuch perſons may ſubmit themſelves to an Arbitrement, as perſons not attainted, *compos mentis*, deaf, dumb, or blind, Femes ſole, men of full age, and the like, the ſubmiſſion of ſuch perſons to an Arbitrement is good; but enough of this; in the next place I ſhall conſider,

What things may be ſubmitted to an Arbitrement, and what not?

THat is to ſay, what things are in Law arbitrable, and what not?

Things and Actions which are meerly perſonall and incertain, as Treſpaſs, a Ward taken away, and thelike, are arbitrable. 22 H. 6. 39. 4 H. 6. 17. 14 H. 4. 2. 4 H. 6. 17. 2 H. 5. 2.

But things which are of themſelves certain, are not arbitrable, except the ſubmiſſion be by deed, or that they be joyned with others incertain, as Debt with Treſpaſs, or the like.

The reaſon that is given in 4 H. 6. is, becauſe the nature of an Arbitrement is, to reduce things to a certainty, which are in themſelves incertain, and not to make things

things more certain, which are certain already.

And the reaſon likewiſe that is there given, why a thing certain, which is joyned with a thing incertain ſhould be arbitrable, is becauſe that the arbitrement is intire, and therefore cannot be good, as to that which is arbitrable, and voyd for the reſidue; (which you muſt underſtand being of things within the ſubmiſſion) but being good for the part which is incertain, it will make the reſt alſo arbitrable.

8 H. 6. 60. 14 H. 4 24. 19 H. 6. 37. 4 H. 6. 17. 3 H. 4. 5. 6 H. 4. 9. 9 H 6. 60. 14 H. 4. 18. 3 H. 4. 6. 21 H. 4. 12. 14 H. 4. 19. & 24. 54 E. 3. 16. 12 Aſſ. pl. 26. 21 E. 3. 15. 23. H. 7 Keilway 99. pl. 6. 21 E. 3. 26.

Chattels real or mixt, are not of themſelves alone arbitrable, as Charters of Lands, Leaſes, or the like, without the ſubmiſſion be by ſpecialty.

Debt upon the arrerages of account before Auditors, becauſe ſuch Debt is due by Record, Annuities, nor Freeholds, none of theſe are of themſelves arbitrable, without the ſubmiſſion be by ſpecialty.

I muſt confeſs that ſome of theſe Bookes ſay, that Arbitrators may award a Free-hold without Deed. Others ſay that the ſubmiſſion muſt be by ſpecialty (as you may obſerve before) and ſome ſay that the Arbitrement in theſe caſes muſt be by deed, and that then the arbitrement may be pleaded in Bar of an action.

But *I take this as a generall Rule, That no Chattels, real or mixt, no Debts by Deed, or Record, no Annuities nor Free-holds are of them-*

themſelves arbitrable though that the ſubmiſſion be by Deed, and I ſhall prove it thus.

If they were arbitrable of themſelves then upon an action brought in any of theſe caſes, an arbitrement were a good plea in Bar of the action, but an Arbitrement in ſuch caſes is no plea in Bar of the action, as appears by the Books before cited) wherefore I conceive that the argument is plain & evident, that theſe are not of themſelves arbitrable.

But for further proof of this ground that I have laid down; it is taken as a generall rule in *Blakes* caſe, in my L. *Cokes 6.* Book, that an arbitrement is no plea when an action is founded upon a dead when it is in the Realty, or mixt with the realty, but in ſuch caſes only, or at leaſt, regularly, where Damages alone are to be recovered. Coke lib. 4. fo. 43. b. 44. a.

I ſhall conclude this with the Book of 21 E. 3. cited before, that an arbitrement that the one party ſhall have the land out of the poſſeſſion of the other, doth not give a Freehold; and if he refuſe to permit him to have the Land, he hath no remedy, if he hath not an Obligation to ſtand to the Arbitrement. 21 E. 3. 26.

By this caſe we may learn, as alſo by that which I have told you before, that though theſe things are not of themſelves arbitrable, & ſo the arbitrement not pleadable in Bar of an action, Yet a man may in ſuch caſes bind himſelf by Obligation to ſtand to

an

an award (as it is uſual ſo to do) and for the non-performance of the Award, the Bond will be forfeited. And this is the ſubmiſſion by ſpecialty ſo often ſpoken of in the Books before.

23 H. 7. Kellway, fo 99. pl. 6. And therefore I conceive that the Opinion of *Grevill* and *Pollard* in 23 *H.* 7. is no Law, who ſay, That where there is a ſubmiſſion of the Right, Title, and poſſeſſion of Land [without any other perſonal difference] to an Award, that an arbitrement in ſuch caſe is void, and that an Obligation to obey ſuch an arbitrement is void.

It is true, the Book makes a *quære* of it, becauſe that others were (as the Book ſaith) clear of another opinion. And certainly the Bond is good, as common experience teaches; I ſhall put a Caſe like it, which I conceive will plainly prove it.

[illegible] on Littleton, l. 106. b. A man makes a Feoffement upon condition that the Feoffee ſhall not take the profits, the condition is abſolutely repugnant and void. But a Bond in ſuch caſe conditioned that the Feoffee ſhall not take the profits, is good.

So I ſay in this caſe, though the thing it ſelf be not arbitrable; yet if a man in ſuch caſe, will bind himſelf to ſtand to an award, the Bond is good.

Laſtly, Cauſes matrimonial are not arbitrable, neither are Offences criminal, as Treaſons, Felonies, &c. becauſe it concerns the Common-wealth that ſuch offenders be puniſhed.

punished. But of this sufficient; The nature or kinds of submission is now to be considered:

Submission to an Award may be either { *General*, or *Special*. / *Absolute*, or *Conditional*.

A General Submission.

A general Submission is of all matters, Suits, Debts, Duties, Actions and Demands whatsoever. Coke lib. 8. f. 97, 98. *Baspoles* Case.

A Special Submission.

A Special Submission is onely of some certain matters in controversie, as such land then in question; or all Actions of Debt, Trespass, or the like, here I could observe unto you the difference betwixt a general submission conditional, and a special Submission conditional; but because it will be more apt and agreeable in case where I shall shew you, what will be a good arbitrement, and what not, I shall refer it thither without further saying. Coke *ubi supra*. Trin. 4. of the Queen, Dyer fo. 22.

An

An absolute Submission.

Coke & Dyer, *ubi supra.*

An absolute Submission, is, where the circumstance of time, where; the manner of the arbitrement, how; whether sealed or unsealed, or the matter of the arbitrement; *viz.* to arbitrate part, or all, or the like, are wholly left to the Arbitrators.

A Conditional Submission.

Coke *and* Dyer, *ubi supra.*

A Conditional Submission, is, where the submission is with an *ita quod*, or *Proviso*, &c. the award be made and delivered under the hands and seals of the arbitrators, before such a time; in such case, if the time, manner and matter, are not all exactly observed, the arbitrement will be void; but of this more fully hereafter.

Dyer fo. 216. b. pl. 59. & 242. pl. 51.

Note Reader, That a submission may be by word only, as well as by deed, or specialty, but the submission by deed is better, for then though the submission be of things not arbitrable, the party forfeits his Bond if he do not observe it, whereas if the submission were by word only, there were no remedy in such case to inforce the party to perform the award.

Who may be Arbitrators, and who not?

I conceive it moſt fit, that ſuch onely ſhould be Arbitrators, who, as they are indifferently choſen (as it is ſaid in the Condition of the Obligation) are men indifferent, juſt and upright, ſwayed neither with favour, fear or affection to either party, men likewiſe having ſufficient parts, and competent underſtanding and knowledge in the matter or buſineſs referred to Arbitrement, having neither legal (as perſons attainted, convicted of Perjury, &c.) nor natural impediments, as Infants, Ideots, Mad-men, or the like.

Theſe qualifications in Arbitrators being duly obſerved, a man need not doubt of a juſt and upright ſentence, the want of the obſervation of which, cauſes many unjuſt and undue ſentences in Arbitrations.

But I do not find in our Law, that either legal or natural diſabilities, do hinder any man from being an Arbitrator, or avoid his ſentence, and certainly they do not; for this differs much from the ſubmiſſion to an Arbitration, for in ſuch caſe, a man ties his intereſt, and binds his perſon, which every one is not of capacity to do; but in this caſe what he doth as arbitrator, is onely to charge or diſcharge others. And beſides, they are choſen by the parties themſelves.

and

and if they be not competent Judges, the fault is theirs that chose them.

And now I shall proceed to shew you what Arbitrators are, and their power, by which you will easily perceive, of what high concernment it is to men, to have a special care of the choice of *Arbitrators*.

What Arbitrators are, and their power.

Pasch. 19 of the Queen. Dyerso. 336. pl. 39. 19 H. 6. 36, 37. Coke lib. 5. fo. 78. a. 8 E. 4. 12.

An *Arbitrator* is, as our Books say, a Judge, indifferently chosen by the parties, to end the matter in controversie between them, *ad Arbitrium*, and therefore they are said to be *Arbitrators*, because they have an *Arbitrary* power, and may judge according to their will and pleasure, so that their Judgment be according to the submission; and these Judges are not tied to any formalities, or punctualities in Law, neither are they sworn, as other Judges established by publike authority are.

Besides, their Power is far greater, for as they may judge as they please, keeping themselves to the Submission, so their sentences are absolutely definitive and concluſive, from which there lies no Appeal; as it was excellently well said by *Heath*, Justice, in arguing of the Case of *Rudston* and *Yates*, cited before, the Judgment of *Arbitrators*, said he (provided that they keep themselves to their Jurisdiction) is higher then any Judgment

Mich. 17. Car. in the Kings Bench.

ment given in any Court; for if they erre, no Writ of Error lies to reverſe their Judgment, no, not ſo much as Equity againſt them.

This is true, where they keep themſelves cloſe to the ſubmiſſion t but if they do not, in ſuch caſe (though no Writ of Error lies to reverſe their Judgment) upon an Action brought upon a Bond or promiſe, for not performing an Award, if the Defendant plead that the Arbitrators made no award, and the Plaintiff replies, that they did make an award, and ſets it forth in ſpecial, if it do appear that the award is void (as it may be in many caſes which I ſhall ſet forth hereafter) the Action in ſuch caſe will not lie, as every dayes experience teaches; and in which our Books are plentiful. By that which I have ſaid before, it is manifeſt, how it concerns every man to have a care what *Arbitrators* he makes choice of; but of this ſufficient. The next thing conſiderable, is,

Whether the Power of Arbitrators be Aſſignable or not?

The Law is clear, that *Arbitrators* cannot aſſign over their power, the reaſon is, becauſe that it is but a nude power or Authority, (which is evident in that it is revocable, as I ſhall ſhew you hereafter) and

therefore by the Law not aſſignable. To which may be added, That it is a Power coupled with a great Truſt and Confidence, and therefore not aſſignable.

47 E. 3. 20. I confeſs, that the Book in 47 E. 3. doth tacitely admit this power to be aſſignable, where the caſe is thus: In debt, the Defendant pleaded, That they ſubmitted themſelves to the Arbitrement of two perſons, who did award, that they ſhould ſtand to the Award of *W. P.* which *W. P.* made an award, which he hath performed, *&c.* here it is tacitely admitted, that the *Arbitrators* might award that they ſhould ſtand to the Arbitrement of another; But *Brook* in abridging this Caſe ſaith, the Law ſeemeth contrary.

8 E. 4. 1, 10. In 8 E. 4. *pro totam Curiam*, except *Yelverton*, where a man is bound to ſtand to the Award, &c. who award, that an Action ſhall be commenced betwixt the parties by the advice of *W.* and *P.* this is a good award; for by this *W.* and *P.* are not *Arbitrators*, but only Executors of the Arbitrement. And in this caſe the *Arbitrators* judged the Title to be tryed betwixt them; but know not what Action ſhould be brought.

But if they had awarded, That the parties ſhould ſtand to the Arbitrement of *W.* and *P.* this had been void, becauſe that they cannot aſſign over their Power.

Yelverton held in the firſt caſe, That the Award was void for the incertainty, becauſe that *W.* and *P.* are to give their advice, which

which is not certain until it be notified, and in this case he hath made them Judges.

I confess that I do somewhat doubt of the Case, because the Judgment of the *Arbitrators* ought to be final, and this is no concluding of the matter in controversie, but a transferring of their power over to the Law to determine it.

Besides, *W.* and *P.* may never give their advice, or may refuse to do it, and in such case the arbitrement will prove idle.

And I do not conceive this Case to be like the Case in 19 E. 4. 1. where the Arbitrators awarded a certain summe, and in surety of payment thereof, to be bound by the advice of Counsel; for here their judgment of the matter in controversie is certain, and final, and here is a sum certain awarded, for which an Action will lie, only the security is to be advised by Councel; which is no Assignment of their power: But of this more hereafter.

Emery and *Emery*'s Case, The chief point whereof was thus; the *Arbitrators* award, that the Plaintiff should make such a Release as one of the *Arbitrators* should like of; in this case the arbitrement was held to be void, because this was an appointing of an authority committed to them all, unto one, which they cannot do. Mich. 41 & 42 of the Queen, in the Common-Pleas.

I shall conclude this Point with *Samons* Case in *Cokes* 5. Book, where the Case is thus; Arbitrators award, That the Defen-

dant ſhould enter into an Obligation to the Plaintiff, and do not judge of what ſum the Bond ſhall be adjudged; the Arbitrement was void for the incertainty, and that the *Arbitators* could not aſſign over their power, but that themſelves ought to determine it; and therefore neither the Plaintiff nor the Defendant could aſſeſs the ſame. The next thing conſiderable is,

Whether the authority of Arbitrators be countermandable, or not?

28 H.6 6.
21 H. 6 30.
49 E.3.9.
18 E.4.9.
8 E.4.10.
5 E. 4 1.
Br. Arbitrement 35
8 H. 21 a.b.

In this caſe alſo the Law will be ſtrong and evident, that this authority is countermandable at any time before the Award made; but not after: becauſe then the Authority is executed, and cannot be countermanded, and ſo are all our Books, but 5 *E.* 4. where it is ſaid, That if a man be bound to ſtand to the Arbitrement of *J. N* he cannot diſcharge the *Arbitrator*; contrary if he were not bound to ſtand to his Arbitrement: yet *Brook* upon this Caſe ſaith, That it is clear that he may diſcharge the *Arbitrator* in both caſes; but in the one caſe he ſhall forfeit his Bond, in the other he ſhall loſe nothing, becauſe *ex nuda ſubmiſſione non oritur actio*; ſo likewiſe it is reſolved in *Vinyors* Caſe, which I ſhall put you preſently.

In 28 *H.6.6.* by *Aſhton*, Juſtice, If there be two Plaintiffs, and one Defendant; or

two

two Defendants and one Plaintiff, put themſelves to the award of others, neither the one Plaintiff without the other, nor the one Defandant without the other, may diſcharge the *Arbitrator*; the reaſon is obvious, becauſe that they were choſen by the joynt authority of both, and therefore cannot be countermanded by one alone.

But that which is the laſt and beſt authority, is *Vinyors* Caſe; where it is reſolved, That though a man be bound to ſtand to the Arbitrement, &c. yet he may countermand the *Arbitrators*; the reaſon that is given is, becauſe a man cannot by his own act make ſuch an authority, power or warrant; not countermandable, which by the Law and its own proper nature is countermandable: as if I make a Letter of Attorney to make Livery, or to ſue an Action in my name, or if I aſſign Auditors to take an account, or if I make one my Factor, or ſubmit my ſelf to an Arbitrement, though that theſe are done by expreſs words irrevocable, or that I grant, or am bound that all theſe ſhall ſtand irrevocable, yet they may be revoked; ſo if I make my Teſtament or laſt Will irrevocable, yet I may revoke it. Coke lib. 8 fo. 82.

But in this caſe it was further reſolved, That by the countermand or revocation of the power of the Arbitrator, the Bond (according to the Opinion of *Brook* before cited) is forfeited, becauſe he was bound to ſtand

to his award, which he doth not do when he discharges the Arbitrator. I have sufficiently cleared it, That the authority of *Arbitrators* is countermandable; But hence arises Two Questions more, The first is,

Whether the Authority of Arbitrators be countermandable without Deed, or not?

The resolving of which doubt I conceive will stand upon this difference, where the submission is by deed; and where without deed: where it is by deed, in such case I conceive the authority cannot be countermanded but by deed, and so is 49 *E.* 3. 9. but where it is without deed, there the authority may be countermanded without deed; and this I ground upon that Rule of Law, *eodem modo quo quid creatur dissolvitur.* It is but agreeable to natural equity, That every thing should be dissolved by the same means or power that it was created.

And in *Vinyors* Case which I have cited before, there the submission was by deed, and the countermand pleaded by deed.

The second and last doubt or question considerable in this countermand of the authority of Arbitrators, is,

Whether

Whether there ought to be notice of the countermand, or not?

There must be notice of the countermand, for without notice, it is no revocation or abrogation of the authority, and so it is resolved in the Books which you have in the Margent. 8 E. 4. 10. b. & 11. a. 21 H. 6. 10. 28 H. 6. 6. & 6 H. 7. 9. Coke l. 8. f. 81, b. 82. a.

Vinyors Case cited before was thus, He brought an Action of Debt upon a Bond against *Wilde*, conditioned for the standing to an award; to which the Defendant pleaded, that the Arbitrator made no award; the Plaintiff replyed, That after the making of the said Writing obligatory, and before the Feast of, &c. the Defendant by his deed, &c. *revocavit & abrogavit omnem authoritatem, &c.* which he had given by his writing obligatory to the Arbitrator, upon which the Defendant demurred.

'Tis true, That in this case it was resolved, that the Plaintiff need not aver, that the Arbitrator had notice of the countermand; but the reason that is given, is not because that no notice is requisite, but because notice is implied in these words, *revocavit & abrogavit*, as in the words, *Feoffavit, dedit & dimisit*, a livery is implied.

But it was resolved, That without notice, it is not revocation of the authority; and therefore if there were no notice in this

caſe (ſaith the Book) the Defendant ought to have taken iſſue, *quod non revocavit, &c.* and if there were no notice, it ſhall be found for the Defendant.

I have done with the countermand of the authority; the next thing to be conſidered, is,

What an Arbitrement is.

An Award, or an Arbitrement, is nothing elſe but the order, judgment and decree of the Arbitrators upon the matter or thing in controverſie, referred or ſubmitted unto them by the parties for their determination. Thus in ſhort you ſee what an Arbitrement is; The next and main ſcruple or queſtion will be,

What Arbitrement is good in Law, and what not.

An Award, or an Arbitrement may be void in Law, in ſeveral reſpects; And firſt,

Where the Award is not according to the Submiſſion.

And this is Threefold, either in reſpect of the { *Perſons,* / *Things ſubmitted,* / or / *The Circumſtances of the Submiſſion.*

And

And firſt, an award may be void where it is not according to the ſubmiſſion in reſpect of the perſons; that is where it doth award a thing to be done by, or to a ſtranger who is not party to the ſubmiſſion.

In 22 H. 6. the caſe is thus; in debt upon a bond to ſtand to an award the Defendant pleaded that the Arbitrators did award him to pay 20. ſhillings to *R.* a ſtranger, which he payd, in this caſe by the opinion of the whole Court, the award was void. 22 H. 6. 46. 8 E. 4. 1 & 9. 36. H. 6. 8. ac.

So in 17 E. 4. two ſubmitted themſelves to the Arbitrement of *I. S.* of all Treſpaſſes, &c. who awarded that the one ſhould pay to the other 40. l. 10. l. in hand, and that he ſhould find three ſeverall ſureties, every one of them to be bound with him in 10 l. to pay the 30 l. reſidue at a certain day, by the whole Court, the award was void, as to the finding of the ſureties which were ſtrangers to the ſubmiſſion. 17 E. 4. 5. 19 E. 4 1. 18 E. 4 22. b & 17 H. 7 Keilway fo. 45 pl. 3.

And therefore certainly that opinion in 5 H. 7. cannot be Law, where it is admitted that an award to make a Feoffment to a ſtranger is good.

Moore and *Bedels caſe* was thus, *Bedel* recovered by default in an Action of Waſt againſt *Moore*, 45. l. damages, after which judgment, they ſubmitted themſelves to an award, the Arbitrators award that *Moore* ſhould pay to *Bedel* 10. l. at certain daies, and 15. l. at certain other dayes, and that for the payment of 15. l. one *William Salter* ſhould Mich. 28. & 29. of the Queen in the Kings-Bench.

ſhould be ready to ſeal and deliver 15. obligations, &c. and that the ſaid *William Salter* ſhould doe other things not within ſubmiſſion.

Paſch. 24 of the Queen, in the Kings Bench. Rot. 2417.

In this caſe was adjudged, that as to all that was to be done by *William Salter*, being a ſtranger to the ſubmiſſion, the award was void, for they are not bound to perform any award but that which is within the ſubmiſſion; ſo likewiſe it was adjudged betwixt *Eccleſfield* and *Malliard*, in the Kings Bench.

Trin. 4. of the Queen Dyer fol. 216.b.

Two ſubmit themſelves to the Arbitrement of *A.* who Arbitrates thus, the award of A. indifferently choſen by I. for the behalf of the obligor of one part, and the obligee of the other part, &c. the doubt was, whether the award were between the parties or no? but it was ruled that it was, becauſe I. was not party to the award, but a deputy or factor, &c.

Trin. 16. Car. in the Kings-Bench.

A. and B. were bound to ſtand to the arbitrement of I. S. concerning a matter in controverſie which did ariſe of the part of the wife of B. before coverture, I. S. awarded that A. ſhould pay ſo much to B. and his wife. In this caſe, it was moved by *Serjeant Rolles*, that the award of payment of money to the wife was out of the ſubmiſſion, and therefore nought.

But

But by the whole Court the award was held good, becauſe it doth appear upon the ſubmiſſion, that the controverſie did ariſe on the part of the wife.

Secondly, an award may be void, where it is not according to the ſubmiſſion, in reſpect of the things or matters ſubmitted.

If one be choſen Arbitrator to make an Arbitrement upon one thing, and he makes an Arbitrement upon another thing, the Arbitrement is void.

In the caſe of *Moore* and *Bedel*, cited before, who ſubmitted themſelves to an Arbitrement of all matters in variance betwixt them; the Arbitrators award (amongſt other things) that whereas *Bedle* being poſſeſſed of a certain Coppy-hold, holden of the Mannor of L. in the County of B. had made a Leaſe for years of the ſaid Copy-hould by Indenture contrary to the Cuſtome, that one *William Salter*, *Pro poſſe ſuo*, ſhold cauſe that no advantage ſhould be taken of the forfeiture; in this caſe it was adjudged, that the award concerning this Copy-hold not being within the ſubmiſſion was void. Pl. Com. fol. 396. a.

Two ſubmitted themſelves by recognizance to an Arbitrement, of the right and intereſt of 200 Acres of Land, &c. the Arbitrators award that the Defendant ſhould have Brakes during his life in the Land; reſolved that the award was not according to the ſubmiſſion, becauſe that, that was of the 7 & 8 of the Queen, Dyer fo. 242. pl. 52.

the right and intereſt in the land; and the award is only of parcell of the profits out of it.

If *I. N.* and three others put themſelves upon an award of *I. S.* of all Actions and demands betwixt them. In this caſe the Arbitrator hath good authority to make an award of all joynt matters betwixt them, and of all ſeverall matters alſo: but he cannot arbitrate any matter betwixt the three onely, becauſe they are one party againſt the fourth, but he may determine betwixt any of three and the fourth.

2 R. 3. 18. b. 22. E. 4. 25. b. Coke lib. 5. fo. 8. 2. b. 22 E. 4. 25 b.

In 9 E. 4. two ſubmitted themſelves to the arbitrement of one *I. L. De omnibus actionibus perſonalibus ſectis & querelis, &c.* betwixt them, &c. who awarded that, becauſe the Defendant had commited divers offences to the Plaintaiff, and that the Plaintiff was ſeiſed of ſuch an houſe in Fee, that the defendant ſhould releaſe, to the Plaintiff, all the right which he hath in his houſe, &c.

9 E. 4. 43. b. 44. c. 36 H. 6. 8 & 11. acc.

In this caſe I conceive the better opinion to be, that the Arbitrement is void, becauſe that the Arbitrator who is a Judge privately choſen by the parties, ſhall be taken *ſtricti juris*, in that thing onely of which the compromiſe is, and not in another thing; and here the compromiſe was but of a thing perſonall, and the Arbitrator hath awarded a ſatisfaction reall, to wit, a releaſe of a right to a houſe which was not compriſed within the ſubmiſſion. And

And *Littleton* in this caſe ſaid, that if he had awarded that the Defendant ſhould ſerve the Plaintiff two years, this would be void.

And by *Coke* if we put our ſelves in Arbitrement *de jure, titulo, & poſſeſſione Manerii de Dale*, and the Arbitrator makes an award of the Mannor of Sale, this is void. Trin. 3. Jac. in the Kings Bench. Rot. 216.

Haynes againſt *Arnſteed*, in debt upon an obligation to ſtand to an arbitrement in all cauſes that have been depending betwixt the parties, *ab initio mundi*, the Award is, that the Defendant ſhall releaſe all cauſes to the Plaintiff, from the beginning of the world, *uſque, &c. Tanfield, Juſtice*, that the award is void, for it is that the Defendant ſhall releaſe all cauſes generally; and the ſubmiſſion is of all cauſes depending then, and ſo the award void, and then the obligation not forfeited; *quod Curia conceſsit*; and judgement was given for the Defndant. Mich. 7. Jac. in the Kings Bench. Cornelius Laurence & Carres caſe.

In a Writ of Errour upon a judgement given in the Common Bench, in debt upon an Obligation, to ſtand to the award of *I. S.* concerning an Action of account pending, the Arbitrator made an award touching the account; and farther awards that every of the parties ſhould releaſe to the other all Actions; the Errour in point of Law was, that the award was void, for though the Arbitrement may be good in part, and void in part, yet if it be void in any part, the Obligation is void; *quod non allocatur*; An award made for more then is ſubmitted, is good for that which is ſubmitted and void for the reſidue.

allocatur; for *per Curiam*, when the award is made for more then is ſubmitted (as in this caſe) it is good the the thing ſubmitted, and void for the ſurpluſage; but if the award be made of leſſe then is ſubmitted, then it is void for the whole.

If divers covenants be, and a man is bound in an obligation to perform them, and ſome of the Covenants are void and againſt Law, and the reſidue good, yet he ought to perform thoſe that are good otherwiſe the Obligation is forfeited, and this was one Alderman *Lees* Caſe, *vide* 14 *H.* 8. wherefore judgement in this caſe was affirmed.

Hob. Rep. page 267. pl. 223.

Goffe againſt *Brown*, upon an Obligation dated the 23. of *February*, to perform an award of all cauſes until the day of the Date of the Bond. The Defendant pleaded that the Arbitrators made no award. The Plaintiff replyed, that the 28. of *March* following, they made an award, *de & ſuper premiſſis*, that the defendant ſhould pay the Plaintiff 20. l. at Midſommer following, in full ſatisfaction of all matters between them, and that they then ſhould make the one to the other, generall releaſes of all matters between them, and aſſigned the breach for the non payment of the 20. l. The defendant demurred; becauſe the award did ſeem to exceed the ſubmiſſion, being for diſcharge and ſatisfaction of all matters to the day of the award, which was

more

more then was ſubmitted, for it may bee that the Arbitrators might mean ſome part of the 20. l. in diſcharge of the cauſes that might ariſe between the 23. of *February*, and the 28. of *March*, which were not within their power, and ſo for the releaſe.

Yet the judgment was given for the Plaintiff, either becauſe *de & ſuper Premiſſis* may import a reſtraint to the thing ſubmitted, or elſe that no new cauſes ſhall be ſuppoſed, except they were alledged; * in pleading of awards of cauſes, they need not aver that theſe were all, &c.

* Coke lib. 8. fol. 98. Boſpoles caſe.

There was a caſe which was betwixt *Robert Tiderby* the Father, and *Robert Tiderby* the ſon, which was thus; they bound themſelves to ſtand to the award of *I. S.* concerning all controverſies, quarrels, and debates, right, title, and poſſeſſion of, or concerning the Mannor of *Dale*, I. *S.* awarded a conveyance of the Mannor of *Dale*, to certain uſes, and that *Robert Tiderby* the Father ſhould deliver all Evidences, and Charters eerning the Mannor.

Mich. 9. Jac. in the Kings Bench.

In this caſe it was objected, that the delivery of the evidences was not within the ſubmiſſion; for they are neither the right nor title, nor poſſeſſion of the Land. To which it was ſaid, that the Charters are the nerves and ſinews of the Land, and therefore within the words Right and Title, for without the Charters, neither of theſe can be maintained alſo by 8 H. 6. & 26 E. 4.

Where

Where Arbitrators have power over the principall, they have power over the accessory; and therefore the Right and Title of the Land, being put to the award of *J. S.* which is the principall, he hath power to make an award of the Charters, which are the accessory.

Again, an Award may in some cases be void, where it is made of part only of things or matters contained in the submission, and not of the whole.

In 19 H. 6. two submitted themselves to an award, upon the right, title, and possession of Land; the Arbitrator made an award of the possession onely; which was objected by *Yelverton* to be nought, because it was of part of the thing in submission only. But by *Newton*, if two submit themselves to an award of all Actions, reall and personal, and an award is made of all Actions personal onely, this is good, and so was the opinion of the whole Court.

39 H. 6. 9. In 39 H. 6. by *Prisot*, where two or three things are put in arbitrement joyntly, and an Award is made of part, and not of the whole, this is a void award.

22 E. 4. 25. 2 R. 3. 18. b. ac. And in 22 E. 4. where the submission is of all trespasses, betwixt *A.* of the one part, and *C.* and *D.* of the other part; and an award is made, that *A.* shall pay 10 l. to *C.* and saith nothing of *D.* yet it is a good award: for it may be that *A.* hath offended *C.* and hath not offended *D.*

Which

Which books, and all others to this purpose, must be understood with these differences: First, where the submission is by Deed, and where without Deed: where it is without Deed, there the award may be made of part only, and good. Coke lib. 8. fo. 98. Baspoles case. Trin. 4. of the Queen Dyer. fo. 216. b. & 7. & 8. of the Queen. Dyer fo. 242. pl. 52.

Again, where the submission is by Deed, there is this difference to be observed; where the submission is generall of all matters, &c. or in speciall, of some particular things only, with an *Ita quod*, or *Proviso*, the award be made *de premissis*; or that the said award be made and given up by such a time: and where the submission is generall or speciall, without such a conditionall conclusion. For in the first case the award must be made of all the matters submitted, because of the conditionall reference, and in the last, the award may be made of part only, and good.

So it is (where the submission is not conditionall) in case of divers particular persons (as the case is put before) if two of one part, and one of another part submit themselves, the arbitrator may make an arbitrement, betwixt the one of the two of the one part, and the other of the other part, and good.

But note Reader, that there is this difference to be observed between pleading of an award upon a submission generall conditionall, and pleading of an award upon a submission speciall conditionall.

Baſpoles caſe, *ubi ſupra.*

For in the firſt caſe, if an award be pleaded *de premiſſis modo & forma ſequentibus*; and alledged to be upon one ſingle matter in controverſie, this is good; becauſe it is ſhewn that the award was made *de premiſſis*, which doth import an award of all that which was referred to the arbitrators; and ſo it ſhall be intended, untill the contrary be ſhewn by the other party, for when the ſubmiſſion is generall, *Generale nihil certi implicat*; and it may well ſtand with the generality of the words, that there was but one cauſe depending in controverſie betwixt them.

But in pleading of an award upon a ſubmiſſion ſpecial conditionall, there the award muſt be expreſly alleadged to be made of all things within the ſubmiſſion, or otherwiſe it is nought, becauſe upon the very face of the award it will appear, whether it were made of all things in the ſubmiſſion or no. For if the ſubmiſſion be of ſeverall things in ſpeciall, and an award pleaded only of one, it is apparent that the award is not of all matters contained in the ſubmiſſion.

Again, if upon the pleading of an award upon a ſubmiſſion general conditionall, it doth appear, either upon the ſhewing of the other party (as hath been ſaid) or by the award it ſelf, that it was not of all matters in controverſie; in ſuch caſe alſo, the award will be void, though the ſubmiſſion were generall, becauſe that it was conditionall.

Note

Mote and *Meverells* caſe in my Lord *Dyer* was thus, they were bound to ſtand to the award of *A.* for Dilapidations, &c. and all other ſuits, quarrels, &c. *Ita quod*, the ſaid award were made, &c. who made an award of the Delapidations, with a proteſtation that hee would not meddle with the reſt. In this caſe the opinion of the Book is, that the award is nought, for that it did not extend to all the points in the ſubmiſſion, for he made no arbitrement of the ſuits and quarrels, &c. but made an expreſſe proteſtation that he would not meddle with them; by which he hath diſabled himſelf to be an arbitrator in the premiſes, becauſe that he refuſed to make an arbitrement according to the ſubmiſſion of the parties, who choſe him for to arbitrate, conditionally, *ut ſupra*: *viz.* So that the ſame award, &c. which is as well of ſuits and quarrels, &c. as of delapidations. Tr in. 4. of the Queen, Dyer, fo. 216. b.

In this caſe, though the latter part of the ſubmiſſion were generall, yet becauſe it was conditionall, and it did appear by the award it ſelf, that it was not made of all things ſubmitted, therefore the award was held void.

But in this caſe I conceive, that if the award had been of the delapidations generally, without the Proteſtation, that it had been good enough, becauſe that the latter part of the ſubmiſſion is generall: and

therefore if the award had been pleaded *de premiſſis*, and alleadge the award of the delapidations, it ſhall be intended that this was all the matter in controverſie betwixt them, untill the contrary be ſhewed.

Coke lib. 8. fo. 98. a.

There is one thing yet in *Baſpoles* caſe worth the noting, which I cannot omit: where it is adjudged, that though there are many matters in controverſie, yet if one only be notified to the Arbitrator, he may make an award of this; for the Arbitrator is in place of a Judge, and his office is to determine *ſecundum allegata & probata*; and the duty of the parties which are grieved, and know their particular griefs, is, to give notice of the cauſes of controverſie to the Arbitrator, for they are privy to them, and the Arbitrator a ſtranger, and every one ought to do that which lies in his notice.

An arbitrator may make an award of one matter only if he have notice of no more.

And if other conſtruction ſhould be made, moſt arbitrements might be avoided: for the one might conceal a treſpaſſe done, or other ſecret cauſe of action given him, & ſo avoid the arbitrement, *& expedit reipub. ut ſit finis litium.* I ſhall cite but one caſe more upon the former ground, and ſo paſſe this, which is thus.

Hob. Rep. page 67. pl. 134. An arbitrement ſeeming not ſo large as the ſubmiſſion.

Barnes brought debt upon an obligation againſt *Greenly*, dated the 4. of September, to perform an award of all cauſes, till the day of the date: the Plaintiff pleaded the award *de premiſſis*, viz. of all cauſes till the third

Third of *December*, and aſſigns a breach: the Defendant maintained the Bar, That the Arbitrator made no award; and Verdict for the Plaintiff, and Judgment: here the Award was a day ſhort of the ſubmiſſion. Upon this a Writ of Error was brought, but what iſſue it had, that my Lord *Hobart* ſaith, he doth not know.

I do conceive *Reader*, that the difference formerly taken, will reſolve this Caſe; for if the ſubmiſſion were conditional, then I think the Award is naught, being not ſo large as the ſubmiſſion; but if it were abſolute, in ſuch caſe I think it good.

But to this it may be ſaid, that the Law will not intend any other matter of controverſie to ariſe betwixt the thitd of *September* and the fourth, without it be ſhewn; and for ought appears, the award is of all cauſes to the fourth of *September*, becauſe no other cauſe appears then what is awarded: therefore *quære*.

Thirdly and laſtly, An Award may be void, where it is not according to the Submiſſion in reſpect of the circumſtances of it.

Page and *Parkers* Caſe was thus, In debt upon a bond conditioned for the performance of an award, ſo that it be delivered in writing *ſub manibus & ſigillis, &c.* the Defendant pleaded the delivery of it in writing, and doth not ſay *ſub manibus & ſigillis*, and a

Page and *Parkers* Caſe in the Kings Bench.

performance; the Plaintiff alledged a breach, and Judgement given for him, which was reverſed in the Exchequer Chamber, becauſe the Defendant did not plead the award *ſub manibus & ſigillis*; for if an atbitrement be not made according to the ſubmiſſion, it is no Arbitrement; if no arbitrement, no cauſe of Action.

1 H.7.5. 7 & 8 of the Queen, Dyer f.243. pl. 56.

So in this caſe I conceive, if the award had been pleaded *ſub manibus*, and not *ſub manibus & ſigillis*, it had been nought.

21 H.8. Br. arbitr. 42. 2 R.3.13. pl. 3?.

So likewiſe if it had not been pleaded that it was delivered in writing, it had been void.

9 E.4. 11.a.

And where there is a ſubmiſſion to an award, ſo that it be made and delivered to the parties in writing, at or before ſuch a day: in ſuch caſe, if it have not all the circumſtances, that is, though it be made, yet if it be not delivered; and though it be made and delivered, yet if it be not delivered to the parties; and though it be made and delivered to the parties, yet if it be not in writing; and though it have all theſe circumſtances, yet if they be not all done, at, or before the day, in any of theſe caſes the award will be void, as appears by the Books in the margent.

8 H.6. f.18.

And if the *Arbitrators* award any thing after the time limited, it is void.

Coke lib.4. fol. 103. *Hungates* Caſe.

Two of one part, and two of another ſubmit themſelves to an award, ſo that the award be made and delivered to both parties,

ties, &c. A delivery in this case to one of either party is not sufficient, but it must be to both the entire parties.

The reason of these cases may be, because (as I have formerly said) that it is but a bare power or authority which is given to an Arbitrator, and therefore it must be strictly executed according to the qualifications and conditions annexed to it.

But the reason that comes more close, is, because that the submission is conditional; *Ita quod*, or *Provisio*, the award of the premisses, or the said award, &c. now it cannot be an award of the premisses, or the said award, if it be not in every thing, matter and circumstance, agreeable to the submission. And now I have done this part, of shewing you where an award shall be void, in regard that it is not according to the submission: I shall now shew you before I go any further, what I intend by saying that the Arbitrement is void; and hereupon I shall make this *Quære*,

In what case an Arbitrement shall be totally void, and where in part only.

And here I shall lay down these three several grounds or differences, all warranted by our Books.

22 H.6.46. 3 H.6.1. 37 E.4. a. Pl.Com. fo. 396. a. Coke lib. 8. *Laſpoles* Caſe. 4 of the Agem, Dyer, fo. 226.b. Coke lib.5. fo. 77. *Salmons* caſe. *Rudſtone* and *Yates* Caſe cited afterwards. 17 E. 4. 5. 18 E.4.22.b. 18 E.4 1. 21 E.4.75. 37 H. 7. Keilway 43. & 45. *Moore* and *Kedels* Caſe before.

First, Where the award is of one ſingle matter only, or of many things, all out of the ſubmiſſion, in ſuch caſe the award is totally void.

Secondly, where the award is of one ſingle matter only, or of many things, all within the ſubmiſſion; yet if it be not of all ſubmitted, where the award is conditional, or not agreeing in circumſtances, (as I have ſhewed you before) or if it be uncertain, impoſſible, &c. though but in part (as I ſhall ſhew you hereafter) in ſuch caſes likewiſe the award will be totally void.

Thirdly and laſtly, where the award is of one thing onely, or of ſeveral things, part within the ſubmiſſion, and part out, there the award is void only as to that which is out of the ſubmiſſion, and good for the reſidue.

To theſe Caſes that I have cited, I ſhall only adde one Caſe remembred before, and that is *Cornelius Lawrence* and *Carres* Caſe, which was thus; They ſubmitted themſelves to the award of *J.S.* concerning an Action of Account pending; the Arbitrator made an award touching the account, and further awarded, That every of the parties ſhould releaſe to the other all actions. In this Caſe it was adjudged that the award was good, as to the account, which was ſubmitted; and void for the ſurpluſage.

But note *Reader*, that though an arbitre-

ment

ment may be void in part, and good in part, as in the caſes aforeſaid, yet it cannot be totally void, as to one of the parties to the ſubmiſſion, and good againſt the other: for as the award muſt be on both ſides, (as I ſhall ſhew you hereafter) ſo I conceive the award muſt be equally and reciprocally obligatory to both parties, and if it be void againſt one, it will be void againſt both.

An Award void againſt one of the parties. is void againſt both.

And I conceive that *Moore* and *Bedels* Caſe cited before, will warrant this: The Caſe was thus, *Bedel* recovered by default in an action of Waſte againſt *Moore*, 45 l. damages, and had judgment; after they ſubmitted themſelves to an arbitrement, and an award is made, That *Moore* ſhould pay to *Bedel* 10 l. at certain dayes, and 15 l. at certain other dayes; and that for payment of the 15 l. one *William Salter* ſhould be ready to ſeal and deliver 15 Obligations, and the award was of other things alſo out of the ſubmiſſion: and in conſideration thereof, that *Bedel* ſhould diſcharge *Moore* of 20 l. parcel of the ſaid 45 l. recovered in the ſaid Writ of Waſte, and that upon the readineſs of *William Salter* to ſeal and deliver the ſaid 15 Obligations, *Bedel* ſhould releaſe to *Moore* all actions and demands, &c.

In *Oſburns* Caſe, Coke l. 10, f. 31.

In this caſe *Moore* brought an action againſt *Bedel*, and ſhewed how that he payed the 10 l. &c. and aſſigned a breach of the award,

award, that the Defendant had not made the releaſe upon requeſt.

It was reſolved, That though that many thing are awarded to be done in ſatisfaction of another, (as in this caſe) and ſome are within the ſubmiſſion (as here the payment of the money) and ſome out (as in this caſe, all to be done by *Salter* being a ſtranger) and ſo void; and though that all were intended by the Arbitrators to be one full and entire recompence for the things, that the other ſhould do in conſideration of this (as here the diſcharge of the 20 l. and the releaſe by the Defendant) notwithſtanding if any thing to be done or be given to the party, though that it be of ſmall value, be within the ſubmiſſion, the award is good: So in this Caſe Judgment was given for the Plaintiff.

In this caſe it is apparent, That if what was awarded on the Plaintiff's part, had been all out of the ſubmiſſion, and by conſequence void, that then the Defendant in ſuch caſe had not been tyed to perform what was awarded on his part, for an arbitrement void againſt one, is void againſt both.

Hill. 14. Car. in the Kings Bench. Rot. 113.

Rudſtone and *Yates*'s Caſe cited before: An Infant and one of full age ſubmitted themſelves to an award; it was adjudged, That the ſubmiſſion, and by conſequence the award, were abſolutely void as to the Infant;

Infant; and being void as to the Infant, that it was likewiſe void as to the man of full age; for that the Award ought to be equally binding.

And now I have ſhewn you where an Arbitrement ſhall be void in the whole, and where in part only; It will be neceſſary that I ſhew you, where a Bond for not abiding ſuch an Award ſhall be forfeited, and where not.

Where an Obligation ſhall be forfeited for not performing of an Award which is void in part, or in the whole; and where not.

The Law as to this, takes this difference, betwixt an award void in the whole, and an award void in part only. Where the award is totally void, there the Bond can never be forfeited for the non-performance of it; becauſe that a void arbitrement, and no arbitrement, are both one in the Judgment of Law.

And therefore no more then a Bond can be forfeited, where there is a void Award made. For as in the firſt caſe, he cannot obſerve that which is not; ſo in the laſt, the Law requires not the obſervation of that which is void. Coke li. 10. fo. 31. Keilway, fo. 175. 2.

As for the Book in 22 *H.* 6. where there was a ſubmiſſion by Bond, and an Award to pay 200 l. to a ſtranger; and it is there ſaid,

ſaid, that the Judgment of the Court was, That though the Award were void, yet it ought to be performed by reaſon of the Bond; for otherwiſe the Bond is forfeited: and therefore ſaith the Book, the Plaintiff traverſed the award; *quod mirum* ſayes *Brook*, for this is no award between the Plaintiff and the Defendant.

Well might he wonder at it indeed; for certainly, this cannot be Law: but becauſe it is ſufficiently refuted by the Lord *Coke* in his Tenth Book, the place cited before, I ſhall thus paſs it. But now on the other ſide, *Where the Award is void in part onely, there the Bond may be forfeited for not obſerving the Award, forasmuch as is within the ſubmiſſion, though not for that which is not contained in the ſubmiſſion:* and therefore if a breach be aſſigned in that part which is void, the Action will not lye.

Mich. 41 & 42 of the Queen, in the Common-Pleas. 18 E. 4. fo. 22. b. 23 a. *Stiles* Caſe. 41 & 42 of the Queen, in the Common-Pleas.

In *Emery* and *Emery*'s Caſe cited before, *Glanvile* cited a Caſe betwixt *Helier* and *Rendals* in the Kings-Bench, in which he ſaid, he was of Councel, where the Plaintiff aſſigned his breach at a void matter; and after Verdict for the Plaintiff, this was ſpoken in Arreſt of Judgment; and Judgment *quod quer. nihil capiat per billam.* But now a breach may be aſſigned as to that which is within the ſubmiſſion, and the Bond forfeited for it.

In

In 18 *E.* 4. it was awarded, That one of the parties ſhould pay 40 l. to the other; 10 l. in hand, and that he and three others ſhould be bound for the payment of the Thirty pound reſidue. In this Caſe by *Brian*, *Neale* and *Choke*, Though that the Award be void as to the ſtrangers, yet it is not void as to the party which ſubmitted, but he muſt plead the Award *verbatim*, as the Arbitrators gave it; and in performance of it he muſt ſay, that he himſelf was bound for the payment of the 30 l. reſidue at a day, and ſhall not ſpeak of the Sureties.

So in *Cornelius Lawrence* and *Carr's* Caſe cited before, it was adjudged, That where there is an award of more then is ſubmitted, it is good for that which is ſubmitted, and void for the ſurpluſage, and that the Bond is forfeited, for non-performance of that which is within the ſubmiſſion. Mich. 7 Jac. in the Kings Bench.

In 17 *H.* 7. by *Vaviſor* and *Frowick*; If *A. B.* be bound to ſtand to the Award of certain perſons of, &c. who award, That the ſaid *A. B.* and *E.* his Wife ſhall levy a Fine of the ſame Lands to the other party, though that the award be void as to the Wife of *A. B.* yet the ſaid *A. B.* is bound upon pain of forfeiture of his Bond, to do it. And agreeing with theſe Caſes, is *Moore* and *Bedels* Caſe ſo often remembred before. 17 H. 7. Keilway, f. 42. pl. 10. & 45. pl. 2. In *Oſburne* Caſe, Coke lib. 10. fo. 131. b.

And we muſt obſerve, That where a man is tyed by promiſe to ſtand to an Award, it will

will be the ſame with the Obligation, as to thoſe things before laid down, as you may ſee in *Moore* and *Bedels* Caſe.

And now having declared unto you in what caſe a Bond ſhall be forfeited for not performing of an Award; and in what not: It will be neceſſary in the next place (before I proceed) to clear the point of notice of the arbitrement; that is,

Whether the Compromittors which have bound themſelves to ſtand to an Award, are bound to take notice of it at their own peril, or not?

8 E. 4. 1, 10, 31, 21. This very point is as much controverted and debated in 8 *Ed.* 4. the Dutcheſs of *Suffolk*'s Caſe, by all the Judges in the Exchequer-Chamber, as it is poſſible for a Caſe to be: and there is as much variety of judgment and opinion in it, as ever I met with in any one Caſe of the Law.

And though I do conceive the better Opinion in that Caſe to be (for it is not reſolved) That the party who hath bound himſelf to ſtand to the Award, muſt take notice of it at his own peril: Becauſe as *Catesby* ſaith excellently well, Though that a man by reaſon ſhall not be compelled to do a thing without having notice of it, yet a man may binde himſelf by his deed to do a thing

thing, the which by reaſon he ſhould not be bound to do.

Yet I conceive the Judgment of theſe Learned men, viz. *Fairfax*, *Starkey*, *Yelverton*, and others, ought not to be ſo undervalued, eſpecially upon no leſs than four ſeveral debates of the Point, as to be called a ſudden Opinion, as it is in *Fraunces* Caſe in my Lord *Cokes* 8. Book. But for the Law in this point, certainly it is now ſetled and in peace, that the Compromittor muſt take notice of it at his own peril, having bound himſelf to ſtand to and obſerve the award. Coke lib. 8. f. 92 b.

In 1 *Hen.* 7. the Opinion was clear (ſaith the Book) that the Obligor ought to take notice of the Award at his own peril, becauſe he hath bound himſelf ſo to do. 1 H. 7. f. 5.

And in 18 E. 4. by *Brian*, *Vaviſor*, and *Catesby*, Juſtices, Where an Award is made, the party ought to take notice of it at his own peril; and they ſay, That ſo it was adjudged in the time of the ſame King, in the Kings Bench. 18 E. 4. 18. 2.

Which Caſes are agreed for Law, in my Lord *Cokes* 4. Book, as alſo in his 8. Book, *Fraunces* Caſe, where it is ſaid, That ſo is the Law without queſtion. Coke. l. 4. fol. 82. & lib. 8. fo. 96.

And the reaſon given there is, becauſe when a man binds himſelf to do, or perform any thing awarded by a ſtranger, he doth by this, take notice at his peril, of all things incident

incident to this, for the ſaving of his obligation.

7 H. 8. Keilway, f. 175. pl. 8. And therefore we may ſafely conclude, the Book in 7 *H.* 8. where there is an Opinion to the contrary, to be no Law: but of this ſufficient. I ſhall now proceed to ſhew you in what reſpects, or for what other reaſons an Award may be ſaid to be void in Law: The firſt ground I laid down, was, where the Award is not according to the ſubmiſſion; The next ſhall be the incertainty.

Where an Award ſhall be void in Law, for the incertainty.

In all Caſes where the Award is uncertain, it is void: for the Arbitrators (as I have ſhewed before) are Judges, and their Judgment muſt be certain; for *judicium debet eſſe certum.* And the Law doth in all caſes abhor uncertainty, becauſe it is the mother of confuſion,

Coke lib. 5. fo. 77. b. & 78. a. *Samons* Caſe; the Arbitrator awarded, That the one of the parties ſhould enter into a Bond to the other, and doth not award in what ſumme the bond ſhall be; adjudged void for the incertainty.

For as the Book ſaith, the Arbitrators are Judges of the caſe, and their Judgment awarded, ought to be certain; ſo that by this the controverſie be decided, that it may not be

be the cauſe, through the uncertainty of new controverſie.

Marcham and *Jennings* Caſe, in debt upon an Obligation, to ſtand to the Arbitrement of *Poly* of *Grayes-Inn*, for the Title of Coppy-hold in queſtion betwixt the parties; *Poly* awarded that *Jennings* ſhould pay to the Plaintiff 20 marks, *viz.* 6 l. 13 s. 4 d. *ſuper viceſimum primum diem Maii*; and 6 l. 13 s. 4 d. at the Feaſt of St. *Michael* next following: and that the Plaintiff ſhould releaſe to the Defendant all his right in the Copy-hold, *ſuper predictum primum diem Maii*, (omitting *viceſimum*) where there was no firſt day named before. Mich. 41. Jac. in the Kings Bench. Rot. 32.

The Defendant pleaded, that there was no award made: the Plaintiff replyed, That there was an award made, and ſets it forth; and that the Defendant hath not paid the 6 l. 13 s. 4 d. upon the firſt day of *May*; the Defendant demurred, intending that the Arbitrement was void for the uncertainty, *viz.* in that it was to be paid *ſuper predict. primum diem Maii*, where there was no firſt day named before. *Tanfield*, Juſtice, The Arbitrement is void in the whole, becauſe that the day to which the Releaſe is referred to be made, is uncertain, and ſo it doth not not appear when it ſhall be made: and for that it doth appear, that the intent of the Arbitrator was, that it ſhould be made at a day certain, and this is not certainly expreſ-

ſed; it is void. And though that the Arbitrement conſiſts upon divers parts, and ſome are certain; yet if any part be uncertain, all is void, if it be material, and concern a party to the ſubmiſſion, as here it doth. And it is not like the caſe of 19 E. 4. 1. for there the Award which was void for part, that part concerned a ſtranger not party to the Arbitrement, but here it concerns both parties to the Arbitrement. And though that there be another clauſe, That the Plaintiff ſhall make further aſſurance; yet his intent was, that the other ſhould be alſo done: and becauſe that that is void for the uncertainty, all is void: for an Award is like a Judgment, which if it be imperfect in any part, it is void for the whole; and after, Judgment was given for the Defendant.

Note here, *Reader*, That if an Award be made of ſeveral things, all within the ſubmiſſion, if it be uncertain in part only, it is totally void; which doth agree with the differences which I have formerly laid down.

8 E. 4. 11. a. In 8 E. 4. cited before, by *Yelverton*; If an Award be made, that an Action ſhall be conceived between the parties, by the advice of *S.* and *F.* the Award is void; becauſe, ſaith he, every Arbitrement ought to be full and certain, and ſo it is not here, untill the ſaid *S.* and *F.* limit the Action.

I

I muſt confeſs the greater Opinion in this Caſe is, That the Award is good: but I conceive the Opinion of *Yelverton* (as I formerly ſaid) to be the better Opinion; becauſe the Judgment of Arbitrators ought to be final (as I ſhall ſhew you hereafter) and nothing ought to be referred to the Judgement of other perſons, or to the Law: for by the ſubmiſſion (which muſt be their rule) they themſelves are to end all Suits and Controverſies betwixt the parties; and if they do not, their Award is not according to the ſubmiſſion, and therefore void.

Rudſtone and *Yates*'s Caſe (which I have put often before, though to other purpoſes) was thus; An Infant and a man of full age ſubmitted themſelves to an Award; the Arbitrators award, That the Infant ſhould pay 5 l. to the other party, for *quit Rents, and other ſmall things, &c.* 'Tis true, that in this caſe it was adjudged (as I have formerly ſaid) that the ſubmiſſion of the Infant was abſolutely void. But it was alſo adjudged, That the Award in this caſe was void, becauſe of the uncertainty of thoſe words, *Other ſmall things*, it not appearing what thoſe other things were: and it may be they were ſuch things, for which an Infant by the Law may not be chargeable: and by the ſame reaſon they have aſſeſſed 5 l. they might have aſſeſſed 20 l. Hill. 15. Car. in the Kings Bench. Rot. 313. 8 E. 4. 1.

Here likewiſe note, *Reader*, That the

Award being of things within the ſubmiſſion, was adjudged totally void for the uncertainty of part onely.

Two ſubmit themſelves to the Award of *J. S.* who awards, That one of the parties ſhould pay a certain Sum to the other; and that the other in conſideration of this, ſhould diſcharge him of a Bond in which they two were bound to a third perſon in an 100. li. *aut eo circiter.*

Paſch. 15. Car. in the Kings Bench.

In this caſe it was objected, That the Arbitrement is void, becauſe the Arbitrators have arbitrated a thing uncertain; by reaſon that it doth not certainly appear of what ſumme the Bond was in which they were bound, and the *eo circiter* is utterly uncertain.

But the Opinion of the whole Court was, That there was a ſufficient certainty; becauſe that lyes not in the power of the Arbitrators to know the direct ſum, and a ſmall variation is not material, and therefore the Award was held good.

Two Rep. p. 65. p. 5.

Nichols and *Grummons* Caſe, there the Arbitrators award, That one of the parties ſhould pay 3 l. 10 s. to the other, and doth not ſay for what; ſo that it may appear whether it concerned him or no; it was held void for the uncertainty. And if this ſhould not be void, it might be very miſchievous to the party; for by this means he might

might be doubly charged. For in an Action brought for the ſame thing, for which this money is awarded to be paid, I doubt the Arbitrement could be * no plea in bar of the Action; becauſe it cannot appear, whether it were for the ſame thing or no. And the averment of the party can never declare the intent of the Arbitrators, and ſo help the uncertainty or other imperfection in the Arbitrement, as is agreed in this caſe, and reſolved alſo in 7 and 8 of the Queen, *Dyer*; and *Girling* and *Goſnold*'s Caſe, here immediately following.

* *Tamen quære*, becauſe Hob. Rep. *ubi ſupra* ſeemeth contrary.

An Averment of the parties cannot declare the intent of the Arbitrators.

Girling and *Goſnold*'s Caſe in the Kings Bench was thus; Debt was brought upon a Bond for not obſerving of an Award; which was, That the Defendant ſhould pay to the Plaintiff 20 l. *per annum*, during the continuance of two Leaſes for years in being, of the Parſonage impropriate of *Yarmouth*, &c. and it was not ſhewn in the Award for what term the Leaſes were; but the Plaintiff ſhewed for what term they were; and the continuance of them; and alledged a breach for non-payment of the 20 l. &c.

Mich. 7 & 8 of the Queen, Dyer f. 242. pl. 5.

Paſch. 5 Jac. in the Kings Bench.

This caſe commenced Paſch. 2 Jac. Rot. 478.

In this Caſe it was objected, That the Award was void for the uncertainty; becauſe that it did not expreſs for what time or term the Leaſes for years were, and that it could not be aided by the averment of the party: and for the uncertainty *Samons* Caſe

was cited, for the averment, my L. *Dyer*'s Caſe which I put you before.

But by *Popham*, Chief Juſtice, the Award is good: he agreed, That where the Award is uncertain, it is void: and that the parties can never aid it by an averment; to ſhew the intent of the Arbitrators, if it be not expreſſed in the Award, either directly, or by circumſtance.

An Award which refer, or may be reduced to a certainty, is good.

But he ſaid, That if *Samon*'s Caſe in *Coke*'s 5. Book had been, that the parties ſhould be bound in ſuch a ſum, as he was bound in to ſtand to the Award or by other reference, ſo that it might be reduced to a certainty, and this infallibility; in ſuch caſe the award had been good.

And in this caſe the payment of the 20l. *per annum*, is referred to the continuance of the Leaſes, which is certain; and therefore he conceived the Award to be good. Of the ſame Opinion were *Williams*, *Yelverton*, and *Tanfield*, Juſtices.

Here Reader, you may obſerve, that an award which is referred, or may be reduced to a certainty, is good enough, agreeing with that rule in law, *certum eſt, quod certum reddi poteſt.*

This ſhall ſuffice to ſhew you in what caſe an award ſhall be void for uncertainty. The next thing conſiderable is,

Where

Where an award ſhall be void in Law, for impoſſibilities.

Whereſoever the Arbitrators award a thing impoſſible to be done, in ſuch caſe the award is void, and by conſequence the bond not forfeitable for the non-performance of it, (as I have ſhewed before) for it were a moſt unjuſt and unreaſonable thing for to make a man incur a penalty, for the not doing of that which is in it ſelf impoſſible to be done.

In 8 E. 4. by *Yelverton*: if an arbitrement be made to doe a thing impoſſible, the party for the non-performance of this ſhall not loſe his Obligation, notwithſtanding that he bee bound to ſtand to the Arbitrement, becauſe he cannot by any poſſibility doe it. 8 E. 4. 10. a.

As if they award, that I ſhall make the *Thames* to run over the Celler of Weſtminſter within a day: or that I ſhall pull down *Pauls* ſteeple with my hands within an hour, or the like impoſſibilites; becauſe I cannot performe it, I am excuſed of my obligation.

So in 8 E. 4. by *Moile*: if the arbitrators award a thing impoſſible, as if I put my ſelf upon an arbitrement this day, and they award, that I ſhall pay a ſum certain at a day which was before the ſubmiſſion; I ſhall not forfeit my Obligation for the non-per- 8 E. 4. 1. b. & 12. b. 9 H. 6. 16. by Keble 19 E. 4. 1. by Nele & 22 H. 6. 46. ac.

formance of this arbitrement, becauſe that it was impoſſible to be performed.

21 E. 4. 48. a. In 21 E. 4. by *Genney*: if an award be, that I ſhall releaſe all the right which I have in the County of M. to *Pigot*, or levie a fine to him and in truth there is no ſuch Manor; this award is void, becauſe it is impoſſible,

21 E. 4. 38. 39. So if the award be, that he ſhall releaſe his ſuit againſt B. and he hath no ſuit againſt him, this is a void award.

But note Reader, *Where the thing awarded is in it ſelf feaſable and poſſible to be done, though in relation to him that is to do it, it may not be poſſible; yet becauſe it carries with it no apparent impoſſibility, the award in ſuch caſe is good.*

8 E. 4. 1. by Moile. If the Arbitrators award, that hee ſhall pay a 1000. Marks preſently, he is bound to do it: and it is the folly of the party to put ſuch confidence in the parties that are choſen arbitrators.

So they may arbitrate things, the party cannot doe (which are the very words of the Book) as that the Defendant ſhall pay 10. l. in money, where peradventure hee never had 10 d. Or that he ſhall pay 20 Tunnes of Wine, or the like; where he hath not one: in theſe caſes the award is good.

19 E. 4. 4. by Nele & Coke.

In debt upon a bond, to ſtand to an award: the Defendant pleaded, that the Arbitrators did award that the Defendant without

9 H 7. 15. b.

within eight dayes after the award, would goe to the houſe of Sir *Henry Collet*, and that he ſhould bring a bale of Woad, &c. and the Defendant ſaith that there was not any bale of Woad in the houſe of the ſaid *Henry Collet*, within eight dayes after the ſaid award.

By *Keble* this plea is not good, becauſe he hath bound himſelf to ſtand to the award, and to perform it, which he muſt do, otherwiſe his obligation is forfeited. Beſides, this is a thing feaſable, for though Sir *Henry Collet* had not any bailes in his houſe, if he would have performed the condition, he ought to have bought certain bails, and to have brought them to the houſe of Sir *Henry Collet*, &c. and then departed, &c. and becauſe he hath tyed himſelf to perform the arbitrement, he ought to do it, if it may be by any poſſibility done.

The reaſon of all theſe caſes is, becauſe it is the folly of the parties to make choice of, and to put ſo great confidence in ſuch perſons, whom they choſe to their arbitrators, and it is no news that a man ſhould ſuffer through his own folly.

Again, where the thing awarded is in it ſelf poſſible, and poſſible alſo to the party who is to do it, yet,

Where the thing awarded lies not in the power of the party himself, without the aid of a third person, in such case, the award is void.

8 E. 4. fo. 2. 2. by Yelverton 22 H. 6. 46. 2c.

Two submit themselves to an arbitrement, the arbitrators award, that one of them shall make I. S. to pay 20. l. to the other, the award is void: becaus in this case it lyes in the will of I. S. whether he will do it, or no, and the party hath no means to enforce him.

17 E. 4. fo. 5. b. 19 E. 4. fo. 1.

Two submit themselves to the award of I. S. who doth award one of the parties to pay to the other 40. l. 10. l. in hand, and for the 30 l. residue that he find three severall persons to be bound every one in 10 l. to the party.

In this case by the opinion of all the Justices, the award was void. And there it is said, that in an arbitrement the Law intends, that the arbitrators should be indifferent and equall judges betwixt the parties; but what indifferency is this, to cause a man to make such a thing to be done, which lies in the will of a stranger whether he will do it or no?

As put the case (saith the book) that an arbitrator will award that I must cause the King to give the *Tower* of *London* to the other, such an award is clearly void.

And

And by *Brian* in 19 E. 4. an arbitrement that the party before such a day shall *levie a fine before us, is good; but if the arbitrement be, that he shall command us to sit here, and to make him levie a fine, this is void, for he hath not power to do it. 19 E. 4. f. 1. 5 H. 7. 22. b. ac. Where I may do the things awarded my self, or inforce it to be done, the award is good.

So in 5 H. 7. an award, that the parties shall discontinue and make Retraxits of their suits, is good: the reason of these cases, I conceive may be, because that though these things cannot be done without the act of Court, yet here is concurrence of the act of the party also, which doth produce the act of the Court. 5 H. 7. ubi supra. 21 E. 4. 36. 10.

And *Hussey* Chief Justice in 21 E. 4. takes the true difference; sayes he, there where the act may be done by my self, without the aid of a third person, in such case I ought to do it; but where it cannot be done without the aid of a third person, there it is otherwise. 21 E. 4. fo. 40.

There was a Case which was 15. of this King, which I cited before to another purpose, which was thus; An Award was made, That one of the parties should pay a certain summe to the other, and that the other in consideration of this, should acquit him of a Bond, in which they were both bound to a third person in a 100 l. &c. Pasch 15 Car. in the Kings-Bench.

In this case, the award was held good, and this diversity was taken by the Court, where the arbitrators arbitrate a party to do

a

a thing which lies in his power without the aid of a third person, there the award is good, otherwise, where it lies not in his power without the aid of a third person.

And here it was agreed that the thing awarded was feasable by the party himself, without the aid of the obligee, and this difference was taken by the Court, where the bond was forfeited, & the penalty incurred, and where not; where the day of payment was not incurred, there the payment of the Money at the day would bee a good discharge of the bond, and by consequence a good acquittall of the party; but where the bond was forfeited, there it could not.

And *Jones*, Justice said, that he might compell the obligee upon payment of the money, though the bond were forfeited, to deliver the bond by *subpœna* in Chancery; or that he might suffer an action to be brought against him, and then discharge and pay it.

27 E. 4. fo. 5. b. According to the opinion of Justice *Jones* in his former case it was ruled, that where arbitrators doe award, that whereas such a one was seized to my use, that I should cause him to make a release to the other being in possession, that the award was good; because that I have such an interest and power that I may compell my feoffees to do it by *subpœna* in the Chancery.

Thus

Thus you ſee, that where I may do the thing awarded my ſelf, without the aid of another, or may inforce it to be done, in ſuch caſe the award will be good: the next thing to be conſidered is,

Where an Award ſhall be void by reaſon of the not indifferency of it, or becauſe it is made of one ſide only.

As Arbitrators are indifferently elected, ſo the Law intends (as it is ſaid in 17 E. 4.) that the arbitrators ſhould be indifferent and equall Judges between the parties, which they cannot be, if they do not give ſatisfaction to both ſides, and therefore in ſuch caſe, where the award is not mutually ſatisfactory, it is void.

It was an ingenious ſaying of *Hearn* in *Emery & Emeryes* caſe cited before; arbitrators ſaith he, are indifferently choſen, ſo that both the parties may have recompence in regard of their Bond, which is *equale pondus* to both: and an arbitrement, ſaith he, is like a fine, wherein the Judges are arbitrators, one hath the land, *& pro hac concordia*, the other hath money.

If the Defendant plead an Arbitrement made betwixt him and the Plaintiff of all quarrels between them, &c. who award, That the Defendaut ſhould go quit of all Actions and Quarrels had by the Plaintiff againſt him; 7 H. 6. fo. 40. by. Strang, 20 H. 6. 13. a. ac.

him; and nothing is ſpoken of the quarrels which the Defendant hath againſt the Plaintiff, the Arbitrement is void.

39 H. 6. by Priſot. So, if two ſubmit themſelves to an award of all Treſpaſſes, and an Award is made, That the one ſhall make amends to the other, and nothing is awarded that he ſhall do to him again, this is a void award, becauſe all is for the one party, and nothing for the other.

12 H. 7. 14. 15. In Treſpaſs for taking away of goods, the Defendant pleaded an Arbitrement, which awarded, that becauſe the Defendant had taken away the goods of the Plaintiff, that he ſhould re-deliver them in ſatisfaction of the Taeſpaſs; which he did: and thereby better Opinion the Plea is naught, becauſe that re-delivery of his own goods, can be no ſatisfaction for the taking and detaining of them.

43 E. 3. 28. An Arbitrement is no plea in Treſpaſs, if the Defendant do not ſay that the Arbitrators awarded that he ſhould give ſomething to the Plaintiff, more or leſs, in ſatisfaction; for that is a ſatisfaction to neither ſide; the Plaintiff is not ſatisfied for the Treſpaſs done him, nor the Defendant diſcharged thereof without ſome ſatisfaction for the wrong done by him.

45 E. 3. 16. In Treſpaſs for goods, the Defendant pleaded an Arbitrement that he ſhould retain part of the goods, and ſhould deliver the

the reſt, which he hath been alwayes ready to deliver, and demands Judgment, this is conceived to be no plea; and this Caſe was put, in debt of 10 l. the Defendant pleads an arbitrement that he ſhould pay part, and not the reſt; or to pay the moiety, and retain the other moiety; this is no Plea.

'Tis true, that *Brooke* makes a *quære* of the Caſe, becauſe it was not adjudged; but withal concludes, that it ſeems it is no plea: and certainly ſo is the Law. For if an award for the re-delivery of all the goods could be no plea, becauſe no ſatisfaction (as the Caſes in 12 *H.* 7. cited before) much leſs an award for the re-delivery of part only: for this is no other then to endeavour to ſatisfie one wrong with another. Br. R. Arbitrement 7.

For the latter caſe, as it is ſaid by *Keble*, in 9 *H.* 7. That it is againſt the Law for the Arbitrators to award the party to pay more than of right he ought to pay. So certainly it is as much againſt the Law, to award the party to pay leſs then of right he ought to pay, for there is no equality nor ſatisfaction for that which is more or leſs in either caſe. 9 H. 7. 16 a

Nichols and *Grummons* Caſe, cited before; There was an Award, that the Defendant ſhould depart from his houſe, wherein he dwelt, &c. and ſhould pay 3 l. 10 s. to the Plaintiff, and it doth not appear for what, &c. In this caſe it was adjudged, That the Award Hob. Rep. pa. 68. pl. 44.

Award was void, becauſe it was of one ſide only. *But now, where there is either an acquittal or an expreſs ſatisfaction on both ſides, or of one ſide only, with an implyed diſcharge of the other, in ſuch caſe the Award will be good.*

19 H. 6. 37. 20 H.6. 19. 22 H.6.39. 9 E.4.41.a.

It is a good Award, that becauſe that the one party hath done more treſpaſs to the other, then the other to him, that he ſhall give a penny in ſatisfaction, and that the other ſhall be quit againſt him.

22 H.6 39. 19 E.4.8.a. 10 H. 6. 14. 19. of the Queen, Dyer f.356. a. pl.39.

An Arbitrement, That the one hath done Treſpaſs to the other, and that the other hath likewiſe done Treſpaſs to him; and therefore that the one ſhall be quit againſt the other, and that the other likewiſe ſhall be quit againſt him, is a good Arbitrement.

12 H.7.14. b. 15. a.

In Treſpaſs for the taking away of goods, though an Award that he ſhall re-deliver the Goods to the Plaintiff in ſatisfaction, be no good Award, yet by *Keble* and *Tremaile*, If the Award had been, that he ſhould carry them from ſuch a place to ſuch a place at his own coſts, this had been good.

Dyer, *ubi ſupra.*

And by *Keble*, If a man take my horſe from me, and we put our ſelves upon Arbitrement; in this caſe, if the Arbitrators award, that he ſhall keep the Horſe until the Feaſt of *Eaſter*, and then to deliver the Horſe; this is a good Award: for he ſhall be charged with the meat of the Horſe, which is a profit and availe to me; and I am diſcharged of the

the keeping and the meat of the Horſe, which is my profit.

Thus you ſee, *That a ſmall or ſeeming ſatisfaction, only ſo the Award be on both ſides, may be good enough.* So in *Dyer* it is ſaid, That there muſt be ſomething done by either party to the other, commodious in appearance at the leaſt.

The reaſon of theſe Caſes may be, becauſe that the Arbitrators are made Judges of the matters in controverſie between the parties: and therefore where the ſubmiſſion is of things uncertain, as Treſpaſs, or the like; in ſuch caſe if the Arbitrators ſhall adjudge the offences to be equal where they are not ſo, and ſo a mutual diſcharge on both ſides: or ſhall award the payment of 10 l. where there was not 5 s. damage; or but a penny, where peradventure there might be 10 l. damage. In ſuch caſe there is no remedy, becauſe you have made them your Judges, and tyed your ſelf to ſtand to their Judgement. Otherwiſe it may be where things certain are ſubmitted, as Debt, or the like, as I have ſhewn you before.

And now I ſhall put you a Caſe or two to the former, *Where there is an expreſs ſatisfaction of the one part, and an implied diſcharge of the other only, and yet the Award good.*

An Arbitrement, That the Defendant ſhall pay a penny to the Plaintiff, in ſatis- 22 H. 6. 29. by Moile.

faction of all manner of Actions, which he hath paid, is a good barre.

Hob. Rep. p.68.pl.54. *Nichols* and *Grummons* Case cited before, if an Award be, That an Obligor in a single Obligation shall pay the Debt, this is a void Award, without there be a provision for his discharge; because payment is no discharge in that case without an acquittance.

22 E.4. 25. acc. But if the Award be, That he shall pay 10 l. for a Trespass, it is good; because a satisfaction implyes discharge.

Coke lib. 8. fo. 98. a. *Easole's* Case. So an Award, That the Defendant shall pay a Debt that was due to the Plaintiff, which he also promised to pay, is good; for there the Award is as well of the one side as the other; because the one receives the money, and the other is discharged of the Debt, and of his promise to pay it.

Thus you see, that where an Award is expresly of one side, and implyedly only on the other, that in such case the Award is good.

The next thing to be considered is, That though the Award be on both sides, yet,

Where there is no means by Law for either party to attain unto that which is awarded him, the Award is void.

22 H 6. 12. 28. b. & 29 a. In Trespass, the Defendant pleaded an Award, That the Plaintiff should pay to the Defendant 10 l. and release to him all Actions

ons of Treſpaſs, and after the Defendant ſhould releaſe to the Plaintiff all Treſpaſſes, which he was alwayes ready to do, and is yet, if the Plaintiff had paid the 10 l. and releaſed. In this caſe this was held no good Plea; becauſe, that if the Plaintiff had paid the money and releaſed, he could have had no remedy to inforce the Defendant to have releaſed; and therefore this Award is no bar of the Action.

So in a Writ of Forger of falſe Deeds, the Defendant pleaded an Arbitrement, that the Plaintiff ſhould be nonſuited in that Writ; and that the Defendant who hath an Aſſize againſt the Plaintiff, ſhould be non-ſuit in this, and ſaith, the day is not yet come, and demanded Judgment: in this caſe the Plea was held naught, becauſe that if he had been non-ſuited in this Action, he had no remedy by ſpecialty, or otherwiſe to inforce the Defendant to be non-ſuit in the Aſſize. 19 H. 6. 37. b. 38. 2.

And here *Newton* ſaid, Should this be a good Plea in a Writ of Forger of falſe Deeds, for the Defendant to ſay, that there was an Award, That the Plaintiff ſhould have an Acre of Land of the Defendant in amends: I ſay (ſaith he) that it could not, if he doth not ſay, *The which he hath conveyed to him*; for there is no remedy in this caſe to conſtrain him to convey it to him.

5 E.4.7.a. 45 E.3.16. If an Arbitrement be, that the Defendant ſhall be bound by ſuch a day, which is not come; he ſhall not plead this in an Action of Treſpaſs, for then the Plaintiff ſhould be barred, and ſhould have no Action to compel the Defendant to make the Obligation. Note *Reader*, That theſe Caſes muſt be intended where the ſubmiſſion is without ſpecialty otherwiſe he were not without remedy.

In this caſe there are theſe three grounds obſervable, and warranted by the Books;

28 H.6.12. 2 H. 4.4. 5 E 4.7. 19 E.4.8. 20 H.6.12. Keilway 12.a. 19 H.6.38 a by *Newton*, p 5.28. 19 H.6.37. by *Aſcue* & *Newton*. 9 E.4.44.by *Nedham*. First, *Where the Award is for payment of money at a day to come, there the Award is good, becauſe an Action of Debt will lye for the Money upon the Arbitrement if it be not paid, or the party may reſort to his Action again, if he pleaſe.*

Secondly, *Though the Award be of a collateral thing for which there is no remedy, yet if it be executed, it is good.*

Thirdly, *and laſtly, Where the Award is of a collateral thing not executed; yet if the ſubmiſſion be by ſpecialty, the Award is good.*

Upon theſe grounds you may obſerve theſe four Rules to direct you, where an Arbitrement ſhall be a good Plea in Barr of an Action in theſe Caſes:

20 H. 6. 18. 19. 28 H.6.12. 2 H. 4. 4. 9 E. 4. 51. 5 E 4.7. 19 E 4.8. 45 E.3.16. First, *Where the award is for the payment of money, for which you have remedy and the day of payment not paſt; in ſuch caſe the award is a good plea in barr of the Action.*

Secondly,

Secondly, *Where the day of payment is paſt, it is no plea in Barre of the Action, without pleading of payment.* 20 H. 6. 12

Thirdly, *Where the day of payment is paſt, yet if there be no default in the Defendant; in ſuch caſe I conceive, the Arbitrement not executed, is a good Plea in barr of the Action.* 20 H. 6. 18. Br. Arbitrement 3. 2 H. 4. 1.

Fourthly, and laſtly, *Where the Award is of a thing for which the party hath no remedy, though the day be not yet come, in which the thing ought to be done or delivered, in this caſe the Award is no Plea in bar of the Action.* 19 H. 6 37. 5 E. 4 7. a. 7 H. 4. 41.

According to theſe differences it hath been ruled in a Caſe in the Kings Bench, which was thus;

The Defendant in Treſpaſs pleaded an Award that he ſhould inſtantly pay 20 s. to the Plaintiff, and ſo demanded Judgment of the Action: by *Flemming*, Chief Juſtice, *Williams* and *Croke*, Juſtices, it was holden, That the Plea was naught, becauſe that he did not ſhew the money was paid, and theſe differences agreed. Mich. 9. Jac. in the Kings Bench.

An Arbitrement pleaded in barr of an Action, where the Defendant hath not performed the thing, and the day paſt, is no good Plea. But where the day of the performance of the thing awarded is to come, and the doing of the thing awarded, may be compelled by action, there the Arbitrement is a good Plea in bar of the action.

And by *Flemming*, If the arbitrement be to make a Releaſe, or ſuch other collateral

matter, which the defendant cannot be enforced by action to doe, in such case the arbitrement is no good plea in bar of the action, though the day of performance be not yet come.

And you must know Reader, that where the arbitrement is to make a release, or such other collaterall thing, and the day to come, though the submission were by specialty, yet the award would be no plea in bar of an action; because that cannot inforce the doing of it, though it may be forfeited for the thing not done.

9 E. 4. 44. a. And so saith *Nedham* in 9 E. 4. though the arbitrement be void to this intent that the plaintiff hath no action to compell the Defendant to make the release; yet it is good to this intent, if the party doe not perform it, that he shall forfeit the penalty of the obligation. But enough of this, the next thing considerable, is.

Where an Award shall be void because it is not finall.

The arbitrators (as I have often told you) are Judges of the matters in controversie referred unto them, and their award is a judgment: now *judicium*, must not only be *certum* (as is said before) but *determinatum* also, it must determine the matter in controversie.

Tis true, an award may in ſuch caſes (as I have ſhewed before) be good of part of the things only ſubmitted, but we muſt underſtand this ſo, that the award muſt be finall as to that part; or elſe it will be void. 19 H. 6. 36.

An award that either party ſhall be Non-ſuit againſt the other in actions commenced by them is void, becauſe it makes no end of the matters in controverſie.

And every Arbitrement, ſaith the Book, ought to make an end and finall determination of the things in diſpute & controverſie; which it doth not in this caſe, becauſe that notwithſtanding the Non-ſuits, they may commence their Suits, *de novo*.

And upon this ground, as alſo the former authority, I conceive that the Book in 5 H. 7. is no Law; where there is an opinion that an award of a Non-ſuit may be good, but it is not only the act of the Court, but the act of the party alſo. But if it were wholly the act of the party, yet for the reaſon before given, becauſe it is no finall concluſion, I conceive it cannot be good, for this is but like blowing out of a candle, which a man at his own pleaſure lights again. 5 H. 7. fo. 23.

So in all theſe caſes that I have put you before, where the award is of one ſide only, it is void alſo for this reaſon; becauſe it doth not determine the controverſies between them, and the controverſies cannot

be ended, without they be ended in reſpect of both parties.

Coke li. 5. fo 78. a. Samons caſe.

So likewiſe in the caſes that I have put you before, where the award is uncertain, it is alſo void for this cauſe for that it is not finall. For an uncertain award cannot decide the matter in controverſie, but is more apt to beget new ſtrifes and variance, then to conclude the old.

8 E. 4. 11. a.

In 8 E. 4. an award is made, that an action ſhall be comenced betwixt the parties by the advice of S. and F. I do conceive in this caſe the award is void, becauſe it is not finall: for this concludes not the controverſie, but leaves it to the judgment of laws See fo. 16. b.

Hob. Rep. p. 305. pl. 381.

Warley and *Beckwiths* caſe, in debt upon a bond to ſtand to an arbitrement: the Arbitrators award that the defendant ſhall pay ſeverall ſummes to the plaintiff which were aleadged by the plaintiff to be done unto him. And further, that if the defendant at, or before the Feaſt of S. *Andrew* the Apoſtle, then next following, ſhould before the ſaid Arbitrators diſprove the debt, or any part thereof, then ſo much ſhould be deducted out of the payment of the ſeverall ſummes aforeſaid, &c.

Tis true, I find no judgment in this caſe, yet I conceive the Law will be ſomewhat ſtrong in it, that the arbitrement is void, becauſe it leaves the matter in ſuſpence, and undecided, whereas it ought to be final and con-

concluſive. And beſides, this is upon the matter a reſerving of power to make a ſecond arbitrement, which I conceive they cannot do.

I ſhall conclude this point with that ingenious conceit of *Herne*, in *Emery* and *Emeryes* caſe, remembred before, only a word or two more of his added. 41 & 42. of the Queen in the Common-Pleas.

An arbitrement ſaith he, is like a fine, wherein the Judges are arbitrators: one hath land, *& pro hac concordia*, the other hath money, therefore fines upon condition are refuſed, becauſe not ſmall.

So the Law doth reject all arbitrements that are conditionall, or which leave the matter in controverſie, in ſuſpence, or unconcluded. For as a fine is ſo called, becauſe that it doth *finem litibus imponere*: ſo the proper work or office of an arbitrement, is to put an end to controverſie.

So *Yelverton* in 8 E. 4. An Arbitrement, ſaith he, is uſed for the Common-weale, for to deſide debates and wrongs amongſt the people, as fines are; here he likewiſe joynes them both together. 8 E. 4. 12. b.

And the very words of the condition in every bond to ſtand to an award, will ſufficiently inſtruct the Arbitrators what they are to do in this behalf (which certainly prudent Antiquity put in to that very purpoſe) where the parties doe ſubmit themſelves to the arbitrement, ſentence and finall determination of the Arbitrators: and therefore

fore the award is not according to the ſubmiſſion, if it be not finall: the next thing to be conſidered, is.

Where an award againſt law ſhall be void.

It may be aptly demanded, what I intend by an award againſt law: for every award that is not according to law; as where it is uncertain, impoſſible, or the like (as I have ſhewn before) may be truely ſaid to be againſt law: and therefore this will be but *actum agere*, to ſhew, that an award againſt Law ſhall be void.

8 E. 4. 12. b. By *Billing* in 8 E. 4. an award which is impoſſible is againſt the Law: for (ſaies he) the law is grounded upon poſſibility & reaſon, therefore that which is impoſſible is againſt Law.

19 E. 4. 2. So by *Nele* and *Choke*, an award which is made in parcels, or which enjoynes a thing not in power of the party, is againſt law.

9 H. 7. 16. a. b. By *Keble* alſo in 9 H. 7. an award that a man ſhall pay more then of right he ought to pay, is againſt law.

Tis true, that all theſe, or the like, in a generall acceptation of the words may be ſaid to be againſt law, becauſe they do not agree with Law.

Coke, Littleton. fo. 206 b. 42 E. 3. 6. 2 H 4 9. 19 H. 6. 55. But in a more particular and reſtrained acceptation of the words, that is properly ſaid to be againſt Law; which is either

malum

malum in ſe, or *malum prohibitum*; that is, either againſt the Commandements of God, or the Decrees, Maxims, and Principles of the Law, as appears by the Books in the margine. And in this ſenſe properly I conceive the Law is to be underſtood, where it ſpeaks of an award againſt the Law.

And therefore if an award be, That the Defendant ſhall kill or rob *J. S.* or that he ſhall maintain the Plaintiff in ſuch a Suit: or that he ſhall be bound to the Plaintiff, being a Sheriff, to ſave him harmleſs if he ſhall imbezel a Writ, or ſuffer an eſcape; or that he ſhall forge ſuch a Deed or Writing for the Plaintiff, or the like: in ſuch caſes, I conceive, the Award will be void, becauſe it enjoyns things againſt the Law. But of this ſufficient. The next and laſt thing to be conſidered, is,

Where an Award made at ſeveral times or parcels, ſhall be void.

An Award, That the Defendant ſhall pay a certain ſum of money to the Plaintiff, and that the ſurety for payment thereof ſhould be by the advice of the Arbitrators; This, by *Choke*, is a void award, becauſe that the Arbitrators cannot make their award twice; for every Arbitrement ought to be made entirely, and not by parcels. And here is firſt an award for payment of the money: and

19 E. 4. 1. 2. by *Choke*.

and then here is another part of the award for the ſufficiency of the ſecurity, and theſe
39 H. 6. 9. at ſeveral times, which cannot be.

By *Danby*, Juſtice, if the Arbitrators arbitrate part one day, and part another day, and give their judgment, there the ſecond is void; but they may commune upon one point one day, and another, another day: ſo that they do not give their judgment *niſi*
17 H. 7. Kellway, f. 43. pl. 10. *unica vice* for all.

And by *Yaxley*, an Arbitrement void in part, is void in the whole; for an Arbitrement cannot be made by parcels.

I conceive, *Reader*, that this point will ſtand upon this difference, where there are ſeveral Awards made, and where but one award made at ſeveral times, or by parcels. I conceive they cannot make ſeveral awards: Firſt, becauſe that were not agreeable to the ſubmiſſion; in which the parties bind themſelves to ſtand to the award and arbitrement of the Arbitrators; and by theſe words in the ſubmiſſion, they have no power to make ſeveral awards or arbitrements: and when they have made one arbitrement, they have executed their power and authority, and therefore a ſecond arbitrement will be void. And again, by the ſame reaſon that they might make two Awards, they might make twenty; which were very inconvenient.

But

But now on the other ſide, I conceive that an award made, be made at ſeveral times, or by parcels, ſo that it be not delivered under their hands according to the ſubmiſſion until the whole be made.

And certainly that which is principally required in every Arbitrement is, That it be agreeable in ſubſtance and circumſtance to the ſubmiſſion; which it may well be, though it be made at ſeveral times, or by parcels, ſo that it be made and delivered according to the ſubmiſſion, at the time appointed.

And I conceive all that is by done the *Arbitrators* is but as a communing or diſcourſe concerning the matters in controverſie ſubmitted unto them; for that they may vary their Judgments as they ſhall ſee occaſion, for they have liberty to arbitrate according to their diſcretions, ſo they have an eye to the ſubmiſſion. I ſay, I conceive all as nothing untill they have finiſhed and delivered the arbitrement, which is the complement and perfection of it.

Beſides, where the ſubmiſſion is of many things, and thoſe of great difficulty, if the Law ſhould be, that the Arbitrators might not make their arbitrement by parcells, it might be very miſchievous to the parties, eſpecially conſidering that ſubmiſſions are moſt commonly to illiterate men.

Neither

judge, and award between the ſaid parties, and upon all manner of matters, ſuits, quarrels, debts and demands, had, moved, or depending betwixt the ſaid parties, or betwixt any of them, or any of their ſervants or children, either in their own right, or to the uſe or behoof of any other perſon or perſons from the beginning of the world unto the day of the making hereof; and eſpecially for the determination of the right, intereſt, term, and title, of and in the moyety of certain Lands, Meſſuages and Tenements, lying and being within the Lordſhip of *Mery*, in the County of *Staff.* now in the tenure and occupation of the abovesaid *Thomas Cox*; as alſo for and concerning the partition of all ſuch Lands, Meſſuages, Tenements and Hereditaments, which deſcended and came by right of inheritance to one *Joane Dart*, Wife of *Jo. Dart*, and *Margaret Cox*, Wife of the ſaid *Thomas Cox*, Daughters and Coheirs of *Margaret Cox*, and Siſters and Coheirs of *Jo. Cox* deceaſed; ſo that the ſaid Award be made and given up in writing unto the ſaid parties, or to one of them by the ſaid Arbitrators, before the Feaſt of St. *John Baptiſt* next enſuing this preſent Obligation, that then this preſent Obligation be void, or elſe, &c. *Quibus lectis & audit. idem Will. dic. quod predict. Thomas & Joh. actionem ſuam predict. verſus eum here. non debent, quia proteſtando quod predictus Arbitrator.*

bitrator poſt confectionem ſcripti prædict. & ante prædict. Feſtum Sancti Joh. Baptiſte, in conditione prædict. ſuperius ſpecificat. nullum arbitrium, ordinationem, ſive judicium, in premiſſis fec. pro placito dic. quod Arbitratores prædict. non deliberaverunt in ſcript. inter ipſos Will. Mattelfeld, Thom. Wright, Rad. Mattelfeld, Thom. Brindley, & prefat. Thom. Cox, & Joh. Cox, aliquod arbitrium, ordinationem, ſive judicium, prefat. Will. Mattelfeld, Thom. Wright, Radulpha Mattelfeld, & Thom. Brindley ſive torum alicui, de & ſuper Premiſſis, in conditione predict. ſpecificat, ſecundum formam & effectum conditionis illius, & hoc parat. eſt verificare, unde pet. judicium ſi prædict. Thom. & Joh. actionem ſuam prædict. verſus eum habere debeant, &c.

And upon this Plea the ſaid Plaintiffs demurred in Law, to which the Defendant joyned; and this was adjudged no Plea, becauſe the Defendant pleads, *Quod non deliberaverunt in ſcriptis*; and the Condition is given up in writing, and therefore the Plea ſhould be, *Quod non reddiderunt in ſcriptis.*

Mich. 27 *H.* 8. a man was bound in an Obligation to another to ſtand to the Arbitrement of certain perſons, and the Arbitrators award, That the Obligee ſhall make a Leaſe for term of years to the Obligor, rendring a certain Rent to the Obligee, &c. and the Obligee made the Leaſe according;

and after the Obligor did not pay the Rent reſerved upon this Leaſe to the Obligee, yet the Obligee, who was the Leſſor, cannot bring an Action of Debt upon the ſame Obligation againſt the Obligor, becauſe he doth not pay the Rent; and this by the Opinion of *Shelly* and *Englefield*, Juſtices, clearly, becauſe theſe words in the ſaid Award, *viz. Rendring a certain Rent*, are not parcel of the ſubſtance of the ſaid award, but the making of the ſaid Leaſe is the effect of the ſaid award; and the Leſſor hath other remedy for the ſaid Rent, as to diſtrain. But if the Arbitrators had awarded, That the Obligee ſhould make a Leaſe to the Obligor, and that for this Leaſe the Obligor ſhould pay to him a certain ſumme of money, that if the Obligor doth not pay the ſaid ſum, then the Obligee ſhall take advantage of this Obligation.

Paſch. 28 *H.* 8. *A.* and *B.* were bound in an Obligation joyntly and ſeverally in 10 l. to one *C.* to ſtand to the arbitrement of certain perſons, of all treſpaſſes, debates, &c. and the Arbitrators award, That the ſaid *A.* ſhould pay to the ſaid Obligee 16 s. and that the ſaid *B.* ſhould pay to the ſaid Obligee 3 s. 4 d. and in debt brought againſt the ſaid *B.* upon this Obligation the ſaid *B.* pleaded generally, that he had performed the ſaid Arbitrement: and *Mountague* and *Englefyeld*,

Englefyeld, Juſtices, ſaid, That this was no good Plea; but that the ſaid Defendant ought to have pleaded ſpecially how he had performed the Award: and he ought alſo to have ſhewn how that the ſaid *A.* had performed the award, becauſe the ſaid *B.* is bound for the ſaid *A.* and every of them for the other.

Mich. 34 *H.* 8. in an Arbitrement where the ſubmiſſion is *de jure titul. & poſſeſſione*, of certain Lands betwixt the parties, the Arbitrators cannot award, that the Obligor ſhall cauſe the Lord of the Mannor of whom the ſaid Land is holden, to let to the Obligee the ſame Land by Copy, &c. or that he ſhall make a Stranger to make a releaſe to the ſaid Obligee of all his right in the ſame Lands; and this by *Baldwin* Chief Juſtice of the Common Pleas. See the like *Anno* 28 *H.6.* fol. *ultimo.*

Now *(Reader)* the reaſon of this Caſe is evident, becauſe 'tis an Award of a thing to be done by a Stranger, to inforce the doing of which lyes not in the power of the party, and therefore void.

Termino Sancti. Mich. Anno 3 & 4 Eliz. Reginæ, Rot. 1324.

ANdreas Meverell nuper de Applebee in Com. Leiceſt. generoſus ſum.fuit ad reſpondend. Joh. Brown, de placito quod reddat ei 30. *l.* quas ei debet & injuſte detinet, &c. Et unde idem Joh. per Will. Perriſon Attornatum ſuum dic. quod cum predictus Andreas quinto decimo die Septembris, Anno Regni Dominæ Reginæ nunc primo apud London, in Paroch. beat. Marie de Arcubus in Warda de Cheap per quoddam ſcript. ſuum obligatorium conceſſiſſet ſe teneri eidem Joh. in predict. triginta libris ſolvend. eidem Joh. cum inde requiſit fuiſſet predictus tamen. Andreas licet ſepius requiſitus predictas triginta libras eidem Joh. nondum reddidit ſed ill. ei hucuſque reddeae contradixit & adhuc contradicit unde dic. quod deteriorat. eſt & dampnum habet ad valenc. decem librarum & inde producit ſectam &c. Et profert hic in Curia ſcriptum predictum quod debitum predictum in forma predicta teſtatur Cujus dat. eſt die & Annoſupra dict. &c.

Et predictus Andreas per Leonardum Stephenſun Attornatum ſuum venit & defend. vim & injuriam quando, &c. Et petit Auditum ſcript. pred. & ei ligitur, &c. Pet. etiam Auditum conditionis ejuſdem ſcript &

ei

ei legitur in hec verba. *The condition of this Obligation is ſuch, that if the above bounden* Andrew, *his Executors, or Adminiſtrators, do ſtand to abide, perform, fulfill, and keep the Award, Arbitrement, Ordinance, and Judgment of* Michael Purifie *Eſq; Arbitrator, indifferently elected, named, and appointed and choſen by the aforeſaid parties to Arbitrate and Ordain, Doom and Judge of, for, in, and upon the delapidations of the Parſonage of* Stretton *in the County of* Derby, *with the appurtenances being, and remaining in ruine and decay, by the fault, and after the death of* Robert Yeomanſon *Clerk, late Parſon there; and alſo in and upon all and ſingular Actions, Suits, Quarrels, Debts, Debates, Treſpaſſes, and Strifes had, moved, ſtirred, or now depending in variance betwixt the ſaid parties from the beginning of the world untill the day of the date hereof, ſo that the ſame Award be made, ſealed and delivered in writing unto either of the ſaid parties under the Seal of the aforeſaid Arbitrator, at or before the firſt day of October next comming after the date hereof, that then this Obligation to be voyd, or elſe to ſtand, and be in full ſtrength and vertue.* Quibus lect. & audit' idem Andreas dic. quod predictus Joh. Acconem ſuam predict. verſus eum habere non debet quia proteſtando quod predictus Arbitrator poſt confectionem ſcripti pred. & ante predictum primum diem Octobris in conditione predict. ſpecificat' non fecit aliquod Arbitrium ordinationem neque judi-

cium inter partes predictas de & ſuper premiſſis in eadem conditione ſuperius ſpecificat. pro placito dic. quod predictus Arbitrator poſt confectionem ſcripti predicti & ante predictum primum diem Octobris non fecit & deliberavit in ſcriptis ſub ſigillo ſuo aliquod Arbitrium ordinationem neque judicium inter ipſum Andream, & prefat. Joh. de & ſuper premiſſis in conditione predicta ſuperius ſpecificat; Et hoc paratus eſt verificare unde pet. judicium ſi predictus Joh. Actionem ſuam pred. verſus eum habere debeat, &c.

Et predictus Joh. dicit quod ipſe per aliqua preallegat. ab Actione ſua predicta habend. precludi non debet quia dic. quod poſt confectionem ſcripti predict. & ante predictum primum diem Octobris in conditione predicta ſuperius ſpecificat (*viz.*) viceſimo tertio die Septembris, Anno primo ſupradict. apud London, in Paroch. & Warda predict. predictus Arbitrator accept' ſuper ſe onere Arbitrii ordinationis & judicii predict. de & pro delapidationibus & aliis de caſubus predict. Rectorie Horeorum, & aliorum edificiorum ordinavit & Arbitratus fuit inter ipſum Joh. & pred. Andream de & ſuper premiſſis in conditione predicta ſuperius ſpecificat' modo & forma ſequent. (*viz.*) quod predictus Andreas Meverell ante feſtum Sc'i. Joh. Baptiſte tunc proxim' ſequent. reperaret & emendaret cum acercubus clavis tegulis & calce ubi neceſſe

ceſſe requiret domum manſionalem predict. Rectorie & omnium aliarum domorum tegulat. ejuſdem Rectorie ſufficient. ad cuſtag. & onera predict. Arbitratoris & cujuſdam Ric. Browne, & etiam quod predictus Andreas inven. & imponer. unam totam ſoleam vocat. a Groundſill ex illo latere verſus campum vocat, le Backſide domus Mauſional. immittend. vel imponend. antes vocat. Studdies & faceret parietes concraticas oblunaret & ſubſtruaret voc. grounſilled latus illum per totum ad tunc in decaſu exiſtent. & etiam cooperire eandem cum tegulis & calice ſufficient. ac quod predictus Andreas reparare faceret in iis & maeremium in longo horreo in omnibus locis inde ubi maeremiũ adtunc fract. vel in decaſu fuerit & etiam cauſaret horreum illud ſufficient. eſſe tectum vocat. Thached ubi neceſſe requiret ratione impoſitionis pred. maeremij & in omnibus alijs locis quam talibus quales eſſent fract. pervent. tantum poſt mortem predicti nuper Rectoris & quod predictus Andreas haberet ſtramina ad emendend. omnes predictas locos ſic fract. Et predictus Andreas emendaret & reperaret omnes mures predict. Rectorie qui fuerunt in decaſu in vita predict. Rectoris ante tunc in de caſu & ruina prout ſufficient. cogitat. eſſe per predict. Arbitratorem & predictum Ric. Brown & pro omnibus aliis decaſibus Januar. oſtiar. ſerarum palorum & murorum fact. & act. poſt mortem predict. nu-

per Rectoris quod predict. Andreas Meverell, esset inde exonerat per predictum Arbitrium & quod predictus Joh. Brown, exoneraret & indempn. conservaret predictum Andream versus, Will. Mote ad tunc Rect. Rectoriæ de ulterioribus demand, pro delapidationibus quam ille que ante & supra fuit appunctuat & assignat. dict. Andree ad faciend. & agend. & insuper predictus Arb trator declaravit per Arbitrium suum predictum quod predictum Arbitrium suum non extenderet alicui aliæ materiæ vel demand. quam super fuit mentionat & declarat. totum pro & concernen. easdem delapidationes vel decasus prout per Arbitrium predictum plenius apparet quod quidem Arbitrum predictus Arbitrator post confectionem scripti prædicti & ante predictum primum diem Octobris (*viz.*) prædicto vicesimo tertio die Septembris, Anno primo supradict. apud London, in Paroch. & warda predict. tam prefat. Andree quam eidem Joh. in Scriptis indentat. sigillo ipsius Arbitratoris reddidit & deliberavit. Et idem Joh. dicit quod licet ipse performavit Arbitrium ordinationem & judicium predict. in omnibus ex ejus parte performand. secund. formam & effect. Arbitrii illius protestand. quod predictus Andreas post confectionem Arbitrii prædict. & ante Festum Nativitat. Sci. Joh. Baptisti tunc prox. sequen. non reparavit & emandavit cum asserculis clavis tegulis & calce predictum domum

mum manſional. predict. Rectorie ubi neceſſe requiret ſecund. formam & effectum Arbitrii præd. Et hoc parat. eſt verificare unde pet. judicium & debitum ſuum predictum unacum damnis ſuis ratione detentionis debiti illius ſibi adjudicari, &c.

Et predictus Andreas ut prius dic. quod predictus Arbitrator poſt confectionem ſcripti prædicti & ante predictum primum diem Octobris, tunc prox. ſequen. non fecit & deliberavit in ſcript. ſub ſigillo ſuo aliquod Arbitrium ordinationem neque judicium int. ipſum Andream & prefat Joh. de & ſuper premiſſis in conditione predicta ſuperius ſpecificat' prout ipſe ſuperius allegavit & de hoc ponit ſe ſuper patriam & predictus Joh. ſimiliter ideo preceptum eſt vic. quod venire fac. hic a die ſancti Mich. in unum menſem 12. per quos, &c. Et qui nec &c. ad recognitionem, &c. qui tam, &c. retourn. Octab. Hillarii.

Poſtea die & loco infra content. coram Jacobo Dyer Mil. Capital. Juſtic. Domine Regine de banco aſſociat. ſibi Joh. Farewell per formam Statuti &c. ven. tam infra nominat. Joh. Brown, quam infra ſcrip. Andreas Meverell per Attorn. ſuos infra content. Et juſ jur. unde ſcil. infra fit mentio exacti ſimiliter ven. qui ad veritatem de infracontent. dicend. electi triat' & jurat' dic. ſuper ſacrum. ſuum quod infra nominat. Michael Purfey poſt confectionem ſcript. infraſpecificat & ante infra ſcript. primum

diem

diem Octob. viz. viceſimo tertio die Septembris, Anno Regni Dominæ, Eliz. Regine nunc primo fecit & inſcript. ſigillo ſuo deliberavit quoddam Arbitrium inter prefatum, Joh. Browne armig. in nomine & pro parte cujuſdam Will. Mote, adtunc Rectoris de Stretton infra nominat, ex una parte & prefat Andream Meverell gener, executorem infracontent. Roberti Yomanſon, Clerici nuper Rector'de Stretton predict. de & p delapidationibus & aliis decaſubus ejuſdem Rectorie Horreorum & aliorum edificiorum ibid. tenor cujus quidem in hec verba. *The Award and Order made at* Stretton in le Field *by me* Michaell Purefye *Arbitrator indifferently elect and choſen betwixt* John Brown *Eſq*; *in the name and for the behalf of one* William Mote *now Parſon of* Stretton *aforeſaid of the one party, and* Andrew Meverell *Gent, Executor of one* Robert Yeomanſon *Clerk, late Parſon of* Stretton *aforeſaid, of and for the delapidations and other decay of the ſame Parſonage, Barnes, and other buildings there the* 23, *day of September, in the firſt year of our Soveraigne Lady Queen* Elizabeth; *firſt I the ſaid* Michaell *order and award, &c.* Ut ſupra ſed utrum Arbitrium predictum per prefat. Mich. Purfey inter eoſdem Joh. Brown, in nomine & pro parte predict. Will. Mote & Andream Meverell, moda & forma predict. factum & delibat. ſit aut in lege adjudicari debeat aliquod Arbitrium ordinationem ſive judicium inter prefat. Joh.

&

& Andream de & ſuper premiſſis fact. & in ſcriptis ſub ſigillo ſuo deliḃat, necne eidem jur. petunt adviſament Cur. &c. Et ſi ſuper materiam predict. videbitur eidem Cur. quod Arbitrium predict. per prefat. Mich. in forma predicta factum & deliberat. ſit aut in lege adjudicari debeat Arbitrium ordinationem ſive judicium inter prefat. Joh. & Andream de & ſuper premiſſis factum & in ſcript. ſub ſigillo ſuo deliḃat. tunc ijdem jur. dicunt ſuper ſacr'um ſuum quod predictus Arbitrator poſt confectionem ſcripti infracontent. & ante infracontent. primum diem Octobris, fecit & deliberavit in ſcript. ſub ſigillo ſuo predictum Arbitrium ordinationem & judicium inter ipſum Andream & prefat. Joh. de & ſuper premiſſis in conditione infraſcript. interius ſpecificat' prout predictus Joh. Brown interius allegavit, & aſſid. dampna ipſius Joh. Brown, &c. ulterius, &c. ad 3. s. 4. d. Et pro miſis & cuſtagiis illis, ad 53. s. 2. d. &c. Et ſi ſuper totam materiam predictam videbitur eidem Cur. quod Arbitrium predictum per prefat. Michael. in forma predicta fact. & deliḃat. non ſit nec in lege adjudicari debeat Arbitrium ordinationem neque judicium inter prefatum Joh. & Andream de & ſuper premiſſis factum & in ſcript. ſub ſigillo ſuo deliberat. tunc iidem jur. dic. ſuper ſacr'um ſuum quod predictus Arbitrator poſt confectionem ſcripti predict. & ante primum diem Octobris non fecit & deliḃavit in ſcript.

ſub

ſub ſigillo ſuo aliquod Arbitrium ordinationem neque judicium inter ipſum Andream & prefatum Joh. de & ſuper premiſſis in conditione predicta interius ſpecificat. prout predictus Andreas interius allegavit, &c.

And the opinion of the Court was that this was a voyd Arbitrement, and the matter was well debated and argued by the Serjeants and Juſtices, and becauſe that this Arbitrement was contrary to the ſaid ſubmiſſion, Judgment was given, that the Plaintiffe, nihil capiat per billam.

This very caſe I doe confeſſe I have cited before which is reported by my Lord *Dyer*, that which occaſioned me to cite it again in this place was the pleadings which I found at large taken and reported (as they are here) by Serjeant *Bendlowes* in his Reports which no doubt may and will be uſeful to Pleaders. And becauſe the Reporter is ſo ſhort, and ſo generall in the reaſon of the Judgement, I think it will not be amiſſe to light you in the dark, to ſhew you the things inſiſted upon, and the reaſons in a more particular way of the Judgement, which were theſe; The Parties were bound to ſtand to the award of *A.* for delapidations, &c. and all other Suits, Quarrels, &c. *Ita quod.* the ſaid award were made, &c. who atbitrates thus; the Award of *A.* indifferently choſen by *I.* for the behalf of the Obligor of the one part, and the Obligee

Obligee of the other part. &c. and after he makes an award concerning the delapidations, with a proteſtation that he would not meddle with the reſt.

And here two thing were inſiſted upon; Firſt, whether the award in this caſe were betwixt the parties or no, becauſe 'tis ſaid the award of *A.* &c. choſen by *I.* for the behalf of the Obligor, &c. aud I conceive the better opinion in my Lord *Dyer*, fol. 216. 217. to be, that it was becauſe *I.* was not a party to the award, but only a deputy or factor &c.

The next thing was, whether the award being made of part only, with a proteſtation that he would not meddle with the reſidue were good or not: and in this caſe the opinion of the Book is (agreeing with what I have ſaid before) that the award is nought, becauſe it did not extend to all the points in the ſubmiſſion, viz. to the Suits and Quarrels, &c. and by his proteſtation not to meddle with them; he hath diſabled himſelf to be an Arbitrator in the premiſſes, becauſe he refuſed to make an Arbitrement according to the ſubmiſſion of the parties, who choſe him for to arbitrate conditionally, *ut ſupra*, *viz.* So that the ſame award, &c. which is as well of Suits and Quarrels, &c. as of delapidations &c. ſo you have here a more full account of the grounds of the aforeſaid Judgment, which I hope will not be taken amiſſe, be-

cauſe

cauſe *bis repitit*? in regard the reaſon given by *Benlowes* was too generall, and too difficult for weak judgments to diſcover, though better might; and if the latter might condemne me, yet I am confident the former will not.

Note (Reader) theſe caſes of Actions for words, as alſo for Arbitrements, which I have here added, being applyed to the grounds laid down in my firſt ſeverall Treatiſes, and their reaſons examined, will according to the ſeverall caſes be either vindicated or refuted.

Circumſtances to be lookt into in ſubmiſſion; firſt, that it be in writing.

NOw that I have ſet forth the Law of Arbitrements, as alſo the perſons and things neceſſary in every Compromiſe; 'tis fit to conſider ſuch other circumſtances as be requiſite in the ſame.

Three things beſides the perſons and things ought to be obſerved in every ſubmiſſion.

Firſt, that it be made by writing, with the parties Covenants or Bonds to bind their Heirs and Executors to perform the award which ſhall be thereupon made, that the Arbitrators may know their power, and the parties how far they are ſubject to their ſentence and determination; and alſo leaſt their

labour

labour and judgment therein ſhould be fruſtrate for want of meanes to compell the execution of the ſame; which may fall out in many caſes where the ſubmiſſion is by word, as appears by the Law of Arbitrements; hereby likewiſe will be prevented confuſion, and incertainty, the certain and unavoydable conſequents of all tranſactions and agreements not committed to writing.

Of the power given to Arbitrators.

Secondly, 'tis convenient that the very ſubmiſſion arme the Arbitrators with ſufficient authority to do all things neceſſary for the ending of the controverſies, as to appoint times and places for their meeting, to examine and decide the matter compromitted, and to bring the parties with their proofs, evidences, and witneſſes thither together before them, and to puniſh the perſons defective, and to expound and correct ſuch doubtfull ſentences and queſtions as may ariſe upon their award inconvenient to either parties, contrary to equity and the Arbitrators intention; which inconveniences could not by them be foreſeen at the making of the award, as it often happens.

Of time and place.

Thirdly, that by the ſubmiſſion, convenient time and place be appointed for the giving

ing up of their award to the parties or their Attornies, Deputies, or Aſſignes, leſt the partiss ſhould otherwiſe be kept long in ſuſpence, and expectation, with vain hope of an endleſſe end; and that the Arbitrators may before the ſet time finiſh their award; for whatſoever they doe arbitrate after that time is voyd, as you find in the Law of Arbitrements. And now I ſhall ſet down ſome few preſidents, (uſefull for moſt men) of deeds of ſubmiſſion to awards, and covenants to perform the ſame; with conditions of obligations to that purpoſe, and certain formes of Arbitrements thereupon made; As alſo variety of Pleadings therein. A Deed of ſubmiſſion may be made as followes.

An Indenture of ſubmiſſion to an award, with Covenants to perform the ſame.

THis Indenture made, &.. between *A.B.* of the one party and *C. H.* of the other party witneſſeth; that the ſaid *A. B.* and *C. H.* do by theſe preſents willingly compromit, and ſubmit themſelves, and either of them to the award, arbitrement, order, rule, doome, and judgment of *A. B.* and *C. H.* Arbitrators indifferently named, elected, and choſen by the ſaid parties to arbitrate

bitrate award, order, decree, and judge of and upon all and all manner of Actions, Suits, Quarrels, Debts, Accounts, Treſpaſſes, Controverſies, Debates, and demands whatſoever had, made, moved, depending, or accrued, or which might have been had, or moved between the ſaid parties at any time or times before the date hereof (except one Action of Debt, &c. depending between the ſaid parties in the Kings Majeſties Court of Common Pleas, or before &c. and except one debt of 10 l. due to the ſaid *A. B.* by the ſaid *C. H.* for the price of certain corn, &c. and except all Lands and Tenements of the ſaid *A. B.* and ſuch like exceptions,) &c. ſo alwaies that the ſame Arbitrators do make their award, order, and judgment of & concerning the Premiſes, to be made by writing indented under all their hands and Seales on this ſide, and before the tenth of *June* now next enſuing, & one part of the ſame deliver, or cauſe to be delivered by the ſaid Arbitrators to the ſaid *A. B.* or his certain Attorney, or Attornies in that behalf requiring the ſame in the ſaid tenth day of *June* now next comeing, at or in the Pariſh Church of *R.* in the ſaid County of *York*; & the other part of the ſaid award to the ſaid *C. H.* his Attorney, or Attornies, Deputy, or Aſſigne, requiring the ſame at the ſaid day & place; and ſo alwaies that the ſaid Arbitrators do not by the ſaid award order, or appoint any act or acts, thing or things to be done, or performed by

to any perſon or perſons, other then to or by the ſaid parties to theſe preſents, their Heirs, Executors, Adminiſtrators, or Aſſignes, or ſome of them of them, and not to or by any ſtranger or ſtrangers to this preſent ſubmiſſion. And the ſaid *A. C.* and *C. H.* and either of them for themſelves, their Heirs, Executors, and Adminiſtrators of either of them, do by theſe preſents mutually covenant, conclude, promiſe, and agree to, and with the other his Exceutors, and Adminiſtrators, and every of them, that neither they, nor either of them will at any time hereafter revoke the Authority hereby given to the ſaid Arbitrators, nor diſcharge them, nor either of them in the ſaid faculty or power of Adminiſtration; and that they and either of them, and the Heirs, Executors, Adminiſtrators and Aſſigns of either of them, on their ſeverall parts ſhall, and will well and truly obſerve, perform, fulfill, and keep all and every clauſe, ſentence, article, ſubmiſſion and agreemenr in theſe preſents mentioned on his or their part to be performed and kept, according to the tenour, true intent, and meaning of the ſame; In witneſs whereof we the ſoid parties to theſe preſents have interchangeably ſet to our hands and Seals the day and year above written.

Here we may take notice that the ſubmiſſion is conditionall, *Ita ſemper quod, &c.* ſo alwaies that the award be made concern-

ing

ing the premiſes, by deed indented under their hands and Seals before the tenth of *June, &c.* and in this caſe the award muſt be of all the things ſubmitted, and agree with the ſubmiſſion in every particular circumſtance of it, or elſe it will be voyd in the whole becauſe 'tis conditionall, otherwiſe it would be where 'tis not conditionall, as you may find before in the Law of Arbitrements.

Another conditional clauſe in this ſubmiſſion (not uſuall) is very obſervable, which is this: ſo alwaies that the ſaid Arbitrators doe not order &c. any Act &c. or thing &c. to be done, to or by a Stranger. In this caſe I do conceive, by reaſon that 'tis conditionall, if they ſhall award contrary it will avoid the whole award; otherwiſe it would be, if the ſubmiſſion were not conditionall; for in ſuch caſe it would be voyd only as to the Stranger, and good to the parties, as it is in the Law of Arbitrements.

Of binding the Parties to perform the award.

THe parties may ſubmit themſelves to award by obligation, with condition according to the effect of the ſubmiſſion, but

that seemeth dangerous, because so they may for a trifle hazard the whole penalty of the Bond, which were too mischievous; but to this it may be truly said, it will the rather ingage to the performance of the award, and thereby determine Controversies, which is the sole aime, scope, and end of Arbitrements; and therefore that certainly is the best and most approved means, which is most likely and probable to effect its end, and for such a condition it may be made as followes.

The condition of an Obligation to perform an Award.

THe condition of this Obligation is such, That if the above bounden *A. B.* his Heirs, Executors, Administrators and Assigns, and every of them do, and shall on his and their part and behalf well and truly stand to, obey, perform, fulfill, and keep the award, arbitrement, order, rule, doome, and judgment of *S. T.* and *W. R.* Arbitrators indifferently elected and chosen, as well on the part of the said *A. B.* on the one party, on the part of the abovenamed *C. D.* on the other party, to arbitrate, award, order, and

and judge of, and upon all and all manner of Actions, Suits, Quarrels, Debts, Accompts, Treſpaſſes, Controverſies, Debates, and Demands whatſoever had, moved, depending, or accrued, or which might have been had or moved between the ſaid parties at any time or times before the date hereof (except one Action of *Ejectione firmæ*, depending between the ſaid parties in the Kings Majeſties Court, commonly called, The Kings Bench, as by the Records thereof in the ſame Court remaining it doth and may appear; and except out of this ſubmiſſion all Lands and Tenements of the ſaid *A.B.* or any like exception) ſo alwaies that the ſame Award, Arbitrement, Order and Judgment of and concerning the Premiſſes be made by writing, indented under all their hands and Seals before ſuch a day next enſuing, and one part of the ſame delivered, or cauſed to be delivered by the ſaid *Arbitrators* to the ſaid *A. B.* or his certain Attorney or Attorneys, Deputy or Deputies in that behalf requiring the ſame the ſaid day, at, or in the Pariſh Church of *R.* in the ſaid County of *Y.* and the other part of the ſaid Award be likewiſe delivered by the ſaid *Arbitrators* to the ſaid *C. D.* or his certain Attorney or Attorneys, Deputy or Deputies in that behalf requiring the ſame at the ſaid day and place. And ſo that by vertue or occaſion of the ſaid Award, nei-

ther of the ſaid parties, nor the ſeveral Heirs, Executors, or Adminiſtrators of them, or any of them be to do any act or thing, to, or by any Stranger to the ſame Award, and to theſe preſents: and ſo as the ſaid *A. B.* do not diſcharge the ſaid *Arbitrators* before the ſaid time; that then this preſent Obligation to be utterly void and of none effect, or elſe to ſtand, remain, continue, and be in full ſtrength and vertue.

Upon this Condition I ſhall only obſerve this (which I might likewiſe have done before upon the ſubmiſſion by Deed of Covenant) that if the Arbitrators ſhall award any thing touching the things excepted, that in ſuch caſe I do conceive the whole award is void becauſe 'tis conditional, and ought to be the ſame award, and made concerning the premiſſes not excepted, which in that caſe 'tis not; otherwiſe it would if the Arbitrement were not conditional, for in ſuch caſe it would be void only as to the things not within the ſubmiſſion; *Tamen quære* in the former Caſe, becauſe 'tis an award *de premiſſis*, and more.

Of

Of the Condition to perform an Award of Lands.

AND if the Award be concerning a Title to Land, the words in the Condition may be thus:

As well of, for, and concerning the right, title, intereſt, uſe, poſſeſſion, and demand of and in the Mannor of *S.* with the appurtenances in *S.* in the ſaid County of *T.* and all Lands, Tenements, and other Hereditaments, with the appurtenances in *S.* aforeſaid, in the occupation of the ſaid *A. B.* and his Aſſigns; as of and upon all Actions, Treſpaſſes, Suits, Quarrels, Debts, Duties, Debates, Griefs, Inconveniences, and Demands had, moved, ſtirred, or depending between the ſaid parties concerning the ſaid Mannor, Tenements, and Premiſſes, and any part thereof. And alſo, if the ſaid *A. B.* before the Feaſt of *P.* now next coming, do ſhew unto the ſaid Arbitrators all ſuch writings as he hath concerning the ſaid Mannor and Premiſſes, at ſuch time and place as the ſaid Arbitrators ſhall appoint for the ſight thereof. So alwayes that, &c. *ut ſupra*; That then, &c. *ut ſupra*.

Upon this Condition I ſhall only obſerve thus much; That as the former was a ſub-

mission general conditional, so this is a submission special conditional; which difference you shall find in the Law of Arbitrements, and the differences of Pleading in such case; As also that a man may bind himself in an Obligation to stand to an Award concerning the title of Land (which of it self is not arbitrable, nor is such Arbitrement any Plea in such case, in barre of an Action) and that in such case the Bond shall be forfeited for non-performance of the Award.

An Arbitrement or Award of Lands, by which the party covenanteth to perform it.

THis Indenture made, &c. between *T. R.* &c. of the one party, and *L. M.* of, &c. of the other party, witnesseth; That whereas there hath been, and yet is contention, variance, and Suit betwixt the said parties, not only for and concerning the right, title, and interest of, and in a certain quantity of ground, by estimation two Acres or thereabouts, lying in *K.* and adjoyning to the Mill of the said *T. R.* in *R.* aforesaid, claimed by either of the said parties to be his own Land and Inheritance; but also for and concerning certain wayes to the Mill of the said *T.* through the ground of the said *L.*

from

from all the Towns, Villages, Hamlets, and other places in the North-side of the River of *D.* bordering, lying, and being within the space of Ten miles of the said Mill, and all other matters and controverlies betwixt the said parties, for the friendly ending and appeasing of which said variances and controversies, the said parties have compromitted and submitted, and by these presents do compromit and submit themselves, and all matters in variance aforesaid, to the order, arbitrement, award, doom, and judgment of *F. W.* and *T. W.* Whereupon the said Arbitrators having viewed the said Ground in variance, and perused divers Writings and Evidences concerning the same, and heard the testimony and witness of divers ancient men and neighbours dwelling nigh the said ground, as well touching the occupation and usage of the said ground by the said *T. R.* and his Ancestors, as also the said wayes used unto the said Mill by the Inhabitants aforesaid time out of mind, do make and declare their award, order, doom, and judgment touching the premisses, and every part of them; and the said *T. R.* and *L. M.* do covenant severally either of them, to and with the other, for themselves, their Heirs, Executors, and Administrators in manner and form following: And first, The said Arbitrators do order, award, and judge, and the said *L. M.* is so con-

contented and agreed, and accordingly doth covenant and grant for him and his Heirs, to, and with the ſaid *T. R.* his heirs, &c. that he the ſaid *T. R.* ſhall and may from henceforth have, hold, occupy, and quietly enjoy to him and his heirs for ever the ſaid parcel or quantity of ground, containing by eſtimation two Acres lying and being on the North ſide of the River of *D.* directly over againſt the ſaid Mill, and demean Lands of the ſaid *T. R.* in *K.* aforeſaid, as it is now bounded and meated forth with ſtones by the ſaid Arbitrators; and ſhall alſo have, make, and take to his and their own proper uſe all the Trees now ſtanding or being, or that hereafter ſhall grow in and upon the ſaid ground, and all other profits and commodities coming of and upon the ſaid Ground (onely the Thorns, Bryers and Herbage excepted and fore-prized) with free liberty, entry, and paſſage, for the felling, hewing, leading, carrying away, and taking of the ſame Trees, and all other the profits and commodities (except before excepted) at all and every time and times hereafter at his and their pleaſure. And that the ſaid *T. R.* his Heirs and Aſſigns, and all and every other perſon and perſons, that ſhall come and bring any Corn to the Mill of the ſaid *T. R.* called *T.* Mill, from the ſaid Towns, Villages, Hamlets, or any other place inhabited, ſhall have free liberties,

wayes,

wayes, and paſſage for the carrying, fetching, and bringing of their Corn to the ſaid Mill, as well over and through the ſaid parcel of ground ſet forth and meted as is aforeſaid; as alſo through, and over other the Grounds of the ſaid *L. M.* in *K.* aforeſaid, in as ample and large manner and form as the Inhabitants of the ſaid Towns, Villages, and Hamlets, or other places have been accuſtomed and uſed to do at any time heretofore, and as 'tis now moſt commonly uſed; and ſhall and may tye and faſten any of their Horſes, Mares, or other Beaſts wherewith they carry any Corn to the ſaid Mill to any Tree growing, or other thing being in and upon the ſaid Ground, ſo that the ſtring, cord or rope exceed not the length of four whole yards at the moſt; and that the ſaid *T. R.* his Heirs and Aſſigns, ſhall and may lawfully at all and every time and times ſo as need ſhall require, amend and repair all and ſingular the wayes, and every part thereof for the eaſe, ſafeguard, and paſſage of the Inhabitants of the ſaid Towns, Villages, Hamlets and places inhabited, coming and going to and from the ſaid Mill without any let, trouble, vexation, or contradiction of the ſaid *L. M.* his Heirs or Aſſigns, or any of them. And that the ſaid *L. M.* his Heirs or Aſſigns ſhall at all times within the ſpace of two years next enſuing the date hereof, make knowledge, and ſuffer,

ſer, or to be made, knowledged and ſuffered, all and every act and acts, thing and things, as ſhall be reaſonably deviſed, or adviſed by the ſaid *T. R.* his heirs or aſſigns, or his or their learned Counſel, at the onely proper coſts and charges in all things of the ſaid *T. R.* his heirs or aſſigns, for the further aſſurance and better making as well of the ſaid part, or quantity of Ground containing about two Acres, as alſo of the ſaid wayes, in manner and form before expreſſed unto the ſaid *T. R.* his heirs or aſſigns for ever, according to the true effect, meaning and purport of theſe preſents; In conſideration whereof it is further ordained, awarded, deemed and judged by the ſaid Arbitrators; and the ſaid *T. R.* doth ſo covenant, &c. That he the ſaid *L. M.* his heirs and aſſigns ſhall, and may have, take, and enjoy only the graſs and herbage, with the Thorns and Bryers yearly growing, or being in or upon the ſaid parcel or quantity of Ground ſo bounded or ſet forth as is aforeſaid. And in further conſideration of the Premiſſes, the ſaid *T. R.* hath paid to the ſaid *L. M.* at the inſealing hereof, at the requeſt of the ſaid Arbitrators, the ſumme of Twenty pound, &c. In witneſs whereof not only the ſaid parties to theſe preſent Indentures of Award interchangeably have put their Seals, and ſubſcribed their names, but alſo the ſaid *Arbitrators* to both the parts of theſe

these Indentures have put their Seals, and subscribed their names, the day and year, &c.

Another Arbitrement of Debt, where the parties are bound to perform it.

TO all Christian People, to whom this present writing of Award indented shall come, *G. W. G. N. S. S.* and *T. N.* of, &c. send greeting in our Lord God everlasting. Whereas divers Suits, &c. between *T. W.* and *J. S.* of, &c. for pacifying, ordering, and ending whereof, the said *T. W.* and *J. S.* have bound themselves either to other in the sum of, &c. of lawful English money, by their several Obligations, bearing date, &c. with conditions there under-written, to stand to, &c. *ut supra*, of the said *G. I. S.* and *I.* *Arbitrators* indifferently elected and chosen, as well on the part and behalf of the said *J. S.* as of the said *T. W.* to Award, Arbitrate, Order, Rule, Judge, End, and Determine all, and all manner of Suits, Debts, Actions, Controversies, Debates and Demands whatsoever depending between the said *J. S.* and the said *T. W.* and *W. W.* his Son and Heir, so that the said Award were made and given up in writing under the hands

hands and Seals of all the *Arbitrators*, at or before the,&c. at,&c. as by the ſaid Obligations and conditions amongſt other things doth and may appear. Know you now, That the ſaid *G. J. S.* and *T.* taking upon them the charge and burthen of the ſaid Award, and having deliberately heard the griefs, allegations and proofs of both the ſaid parties, do by theſe preſents arbitrate, award, order, deem and judge of and concerning the Premiſſes in manner and form following; That is to ſay, Firſt they do award, order, deem and judge by theſe preſents, That the ſaid *J. S.* his Executors or Adminiſtrators, or ſome of them, ſhall well and truly pay, or cauſe to be paid unto the ſaid *J.W.* or his certain Attorney, Executors or Adminiſtrators, or ſome of them, at or before the,&c. at or in the,&c. two hundred pound of, &c. at or before the,&c. other two huudred pound of, &c. in full ſatisfaction of four hundred pound, for payment whereof tbe ſaid *J. S.* ſtood bound to the ſaid *T.W.* in, and by four ſeveral Obligations, whereof two are already forfeited, as thereby may appear. Alſo the ſaid Arbitrators do award, order,&c. That the ſaid *J.B.* his Executors and Adminiſtrators, or ſome of them, at their, or ſome of their coſts and charges, ſhall before the,&c. cauſe and procure, that all Suits, Bills, Plaints, and Informations heretofore commenced againſt the ſaid *T. W.* in any Court or Courts whatſoever,

ſoever, either by or in the name of the ſaid *J. S.* or by or in the name of *H. S.* his Son, or by or in the name of our Soveraign Lady the Queens Majeſty that now is, and of every or any of them, or by and in the name of any other perſon or perſons, by the conſents, means, and procurements of them, or any of them, ſhall thenceforth ſurceaſe, and be no further proceeded in by them, nor any of them; or by the means, conſent, or procurement of them. And before the, &c. be utterly diſcontinued and made void.

And the ſaid *Arbitrators* do further award, order, deem and judge by theſe preſents, That for the ſure payment of the ſaid ſum of Four hundred pounds, the ſaid *J. S.* and *G. S.* within two dayes next after, tender or delivery of the one part of this preſent Award to the ſaid *J. S.* ſhall well and ſufficiently make, ſeal, and deliver as their Deeds to the ſaid *T. W.* in, &c. one Obligation or writing obligatory ſufficient in the Law, wherein, and whereby the ſaid *J. S.* and *G. S.* ſhall acknowledge themſelves, and either of them to be joyntly and ſeverally bounden to the ſaid *T. W.* in the ſum of Four hundred pounds of, &c. with condition thereupon in due form of Law, indorſed for the ſure payment of the ſaid ſumme of Two hundred pounds, parcel of four hundred pounds at or in the, &c. before, &c. and the other two hundred pounds, reſidue of the ſaid ſum of Four hundred pounds, at or before the, &c.

&c. and at, &c. Alſo the ſaid Arbitrators do further award, &c. that the ſaid *I. S.* his Executors, or Adminiſtrators, or ſome of them ſhall and will before the, &c. at his and their own proper coſts and charges, cauſe and procure to be cancelled and made voyd one Recognizance of two hundred pounds, bearing date the, &c. knowledged and inrolled in the Queenes Majeſties high Court of Chancery, wherein and whereby the ſaid *T. W.* ſtandeth bounden to the ſaid *I. S.* in the ſaid ſumme, with condition thereunto annexed, that if the ſaid *T. W.* his Heirs, Executors, and Adminiſtrators, and every of them ſhould well and truly obſerve, perform, fulfill, and keep all and every the covenants, grants, articles and agreements, which on his and their parts were to be obſerved, performed, fulfilled and kept, contained and ſpecified in on indenture bearing date, &c. had, and made between the ſaid *T. W.* on the one party, and the ſaid *I. S.* on the other party, concerning the marriage of *W. W.* Son and Heir apparent of the ſaid *T. W.* and *A. S.* Daughter of the ſaid *I. S.* according to the true intent, purport and effect of the ſaid Indenture; that then the ſaid Recognizance to be voyd and of no effect, or elſe to ſtand, &c. as by the ſaid Recognizance more plainly and at large appeareth. And alſo that the ſaid *I. S.* his Executors, or Adminiſtrators, or ſome of them ſhall, and will before the Feaſt of,

&c.

&c. deliver, or cauſe to be delivered unto the ſaid *I. W.* his Executors, or Adminiſtrators, or ſome of them in the ſaid now dwelling houſe of the ſaid *T. W.* aforeſaid, the ſaid Indenture of Covenants concerning the foreſaid Marriage, cancelled or to be cancelled In witneſſe whereof the ſaid Arbitrators to both parts of this preſent award indented, have ſet their hands and Seals, dated the, &c.

An Arbitrement, or award of Debt, made by an Earl upon ſubmiſſion by Bond.

TO all true Chriſtian people to whom this preſent writing of award indented ſhall come; The right Honourable *G.* Earl Marſhall of *England*, &c. ſendeth greeting, &c. Whereas divers Suits, Variances, Controverſies, and Debates heretofore have been had, moved, and depending between *T. G.* of *T.* in the County of *I.* Yeoman, on the one party, and *F. M.* of *H.* in the ſaid County Gent. on the other party, for pacifying, ordering, and ending whereof the ſaid *I. G.* and *F. M.* have bound themſelves either to other in the ſumme of four hundred pounds of, &c. by their ſeverall Obligations, bearing date, &c. now laſt paſt, with condition there-under written, to-

ſtand to, abide, perform, fulfill, and keep the award, order, doom, judgment, and determination of the ſaid Earl, indifferently elected, and choſen by the mutuall conſent, and at the earneſt and humble requeſt, and petition of both the ſaid parties, to arbitrate, award, order, judge, and determine of, for, and concerning all, and all manner of Actions, Suits, quarrels, debts, duties, and demands whatſoever, had, moved, or depending, or which hereafter might be had, moved, or depend between the ſaid parties, by reaſon of any matter, thing, or things whatſoever accrued, or grown from the beginning of the World, untill the day of the date of the ſame Obligation; ſo that the ſame award were made in writing, indented under the hand and Seal of the ſaid Earl before the nineteenth day of, &c. and the one part of the ſame writing indented, delivered, or cauſed to be delivered by the ſaid Earl to the ſaid *T. G.* to his Executors, &c. or any of them, or to their, or any of their uſe, upon, or before the ſaid nineteenth day of, &c. at, or in the now Manſion or Mannour Houſe of the ſaid Earl, called *S.* in, &c. and the other part thereof to the ſaid *F. M.* &c. *Ut ſupra*, as by the ſaid Obligations and Conditions thereof doth, and may more at large appear Know you now, that the ſaid Earl of his meer good will and favour, which he beareth to both the ſaid parties, and of the great and honourable reſpect

which

which he hath of their future quietneſſe, taking upon him the charge and burden of the ſaid award, and having deliberately at ſundry times at large heard, and conſidered the griefs, allegations, and proofs of both the ſaid parties, doth by theſe preſents arbitrate, award, order, doom, and judge of and concerning the premiſes, in manner and form following, viz. That the ſaid *F. M.* his &c. or ſome of them, ſhall well and truly pay, or cauſe to be paid unto the ſaid *I. G.* his, &c. or ſome of them, the ſumme of one hundred and ſixty pounds, of, &c. in the, &c. in manner and form following, viz. upon, &c. eighty pounds thereof, and upon, &c. other eighty pound thereof reſidue, at, &c. in full payment and ſatisfaction of the ſaid ſumme of one hundred and ſixty pounds, and that in conſideration thereof the ſaid *T. G.* ſhall permit and ſuffer all Suits, quarrels debts, duties, and demands, grown before the date of the ſaid Obligation to ceaſe and be diſcontinued, and no further proſecuted by him, or any other by his procurement. And furthermore for as much as the ſaid *F. M.* is charged as is aforeſaid, for the payment of the ſaid ſum of a hundred & ſixty pounds, partly by reaſon of a Judgment heretofore given for the ſaid *T. G.* againſt one *L. S.* in the Q. Majeſties Court, commonly called, The Kings Bench in an Action of Debt, in which the ſaid *T. G.* hath recovered againſt the ſaid *L. S.* two

hundred eighty five pounds, & four pence, as by the Record thereof, remaining in the ſaid Court appeareth: His honour doth further award by theſe preſents, in relief and eaſe of the ſaid *F. M.* That if the ſaid *F. M.* his, &c. or any of them, do well and truly pay, or cauſe to be paid the ſaid ſumme of one hundred and ſixty pounds, according to the true meaning of this preſent award; And if the ſaid *L. S.* his Heirs, &c. or ſome of them, ſhall not well and truly ſatisfie, content, and pay unto the ſaid *T. G.* his, &c. the ſaid ſeverall ſummes above in this award appointed to be paid by the ſaid *F. M.* before the ſeverall days herein above mentioned; That then and at all times after any ſuch default of payment ſo to be made by the ſaid *L. S.* his, &c. the ſaid *T. G.* his, &c. ſhall permit and ſuffer the ſaid *F. M.* his Executors, and Adminiſtrators, and every of them, at the coſts and charges of the ſaid *F. M.* his Executors, and Adminiſtrators, effectually to proſecute, or cauſe to be proſecuted, all, and every ſuch Execution, and Executions upon the ſaid Judgement ſo had for the ſaid *T. G.* againſt the ſaid *L. S.* as to them, or any of them, or the learned Counſel of them or any of them ſhall ſeem good. And all and every ſum and ſums of money thereby to be obtained, to take, and convert to the only proper uſe and behalf of the ſaid F. *M.* his Executors, and Adminiſtrators, without any account, recompence, or payment

payment thereof, or therefore to be yeelded or made to the ſaid *T. G.* his,&c. or any of them, any thing in this preſent award conteyned, &c. notwithſtanding. In witneſſe whereof the ſaid Earl to both the parts of this preſent award, hath ſet his hand and Seal, dated the,&c.

Note (Reader) all ſuch Covenants and Conditions as are uſually made for the aſſurance or enjoying of Lands or Tenements Goods and Chattels may be inſerted into awards, as ſhall ſeem good unto the Arbitrators or parties.

Of notice of the Arbitrement.

AND when the Arbitrators have made their award according to the ſubmiſſion, though they are not bound to give notice, but the parties are to take notice thereof at their own perill, to ſave the forfeiture of their Bonds (as you ſhall find the Law to be clear in my Diſcourſe of Arbitrements) yet it ſeemeth convenient and agreeable to equity and a good conſcience that they ſhould not be ſurpriſed, but that the Arbitrators ſhould in due time before that either party be to perform any part thereof, give notice of the ſame unto them, leaſt otherwiſe they break their Bonds, and Covenants in that behalf (if any ſuch be) before they have knowledge of the ſame.

The finall cause and effects of Arbitrements.

AND thus by that which is now set forth, and formerly hath been discourſed of Arbitrements, it doth evidently appear, that the ſcope and end of Arbitrements and other Judgments is all one; and chiefly, the finall determination of Striſes, Suits, and Controverſies, and ſo conſequently their effects not much different. But the Law ſeems more favourable to Arbitrements, then other Judgments, inſomuch as by Arbitrators the ſtrict courſe and tedious ceremonies of Law Suits which are wont moſt commonly to weary Suiters, (and to dive ſomewhat too deep into their Purſes) are cut off, and ſhorter deciſions by them made, with little or no coſt at all. But to make this good, this caveat (*Reader*) muſt be obſerved, leſt this courſe prove as bad, if not worſe then a Law Suit; that there be honeſt, indifferent, and judicious Arbitrators choſen, not only ſuch as are juſt men, but ſuch as are skilfull and knowing in the matters in controverſie, that their ignorance may not make them erre, and the parties ſuffer as much by their folly, as others no doubt have done by their Arbitrators in juſtice and knavery; for unequal and inſufficient Arbitrements do often cauſe tedious

Suits

Suits, and thoſe no ſmall expence, ſo that this courſe which the people make choiſe of for their cure, proves often worſe then the diſeaſe; but I have touched upon this before, and therefore this here ſhall ſuffice.

An Award made by an Arbitrator touching Copy-hold Land, between an Alderman of London and another.

TO all Chriſtian People, to whom this preſent writing of Award indented ſhall come, I *H. T.* of *Lincolns-Inne*, in the County of *Middleſex* Eſquire ſend greeting in our Lord God everlaſting; Whereas Suits, Variances and Debates heretofore hath been, and yet are had, moved, and depending, as well in the Queens Majeſties Court of Requeſts, as in divers other Courts, between *R. H.* Citizen and Alderman of *London* of the one party, and *R. E.* of *K.* in the County of *M.* Yeoman of the other party, of, for, and concerning the right, title, uſe, intereſt and poſſeſſion of divers Lands, Tenements and Hereditaments, with the Appurtenances, lying and being in *K.* within the Mannor or Lordſhip of *T.* within the ſaid County of *M.* and containing by eſtimation about two hundred Acres of Land, Meadow, Paſture, and Wood, commonly called or known by the name of *Hebines*

Land; for the appeasing, final end, and determination of all which said Suits, Variances, and Debates, the parties aforesaid have submitted and compromitted themselves to stand to, obey, and perform the Arbitrement, Ordinance, Doom and Judgment of me the said *H.T. Arbitrator*, indifferently elected, named and chosen by both the said parties, indifferently to Arbitrate, Order, Doom, Award and Judge, as well of, for, and concerning the estate, right, title, interest, use and possession of all and singular the said Premisses, and every part and parcel thereof; as also of, for, and upon all manner of Actions, Suits, Quarrels, Debts, Debates, Trespasses and Demands whatsoever heretofore had, moved, stirred or depending between the said parties from the beginning of the world until the Twentieth day of *November* last past, as by their several Writings Obligatory, wherein either of the said parties stand bound each to the other of the same parties in the sum of Two hundred pounds, bearing date the said twentieth day of *November*, and made for the true performance of the said Award, more at large it doth and may appear. Whereupon I the said *T.H.* having taken upon me the charge and burden of the said Arbitrement, and having present before me both the said parties, and having also very advisedly weighed and considered the titles, claims, allegations, and proofs of either of the said parties to the

said

ſaid Premiſſes; And upon ſight and due conſideration of all the Evidences, Writings and Proofs ſhewed and made before me the ſaid *H. T.* by both the ſaid Parties, I the ſaid *H.T.* do Award, Arbitrate, Order, Doom and Judge of the Premiſſes in manner and form following: That is to ſay, Firſt, I the ſaid Arbitrator do Award, Doom, Order, and Judge, That the ſaid *R.E.* or his heirs, at all times within three years next enſuing the date of theſe preſents, upon lawful and reaſonable warning by the Steward, Bayliff or Reeve of the ſaid Mannor of *T.* for the time being, ſhall at the next Court ſo to be holden, then next after ſuch warning had, ſurrender and give up into the hands of the ſaid *R. H.* his Heirs or Aſſigns in open Court, according to the Cuſtome of the ſaid Mannor, to the uſe of the ſaid *R. H.* and his heirs for ever, all and ſingular the aforeſaid Lands, Tenements and Hereditaments hereafter in theſe preſents mentioned, expreſſed, and declared; that is to ſay, one Manſion or dwelling Houſe, wherein the ſaid *R. E.* now dwelleth, with all Edifices and Buildings, &c. And furthermore, I the ſaid *H.T.* do award, ordain, doom and judge by theſe preſents, That the ſaid *R. H.* his Heirs or Aſſigns at the ſaid Court, where and when the ſaid Surrender ſhall be ſo made, ſhall aſſure and convey unto the ſaid *R.E.* or to his heirs, that ſhall ſo ſurrender

the

the Premiſſes as aforeſaid by Copy of Court-Roll, according to the Cuſtome of the ſaid Mannor, or otherwiſe as by the ſaid *R. E.* his heirs and aſſigns, or any of them, or by his or their Learned Counſel, ſhall be reaſonably deviſed or adviſed, and at the proper coſts and charges of the ſaid *R. E.* his heirs and aſſigns, not altering by the ſaid aſſurance or aſſurances ſo to be deviſed or adviſed as is aforeſaid any Cuſtome, Liberty or Juriſdiction of the ſaid Lordſhip, Mannor, or other the Premiſſes, with all and ſingular the ſaid Lands, Tenements and Hereditaments, and all other the Premiſſes, with their appurtenances whatſoever, before by theſe preſents ordered, and judged to be ſurrendred as is aforeſaid (four Acres of Land now in the occupation of, &c. parcel of the Premiſſes to be choſen by the ſaid *R. H.* &c. only excepted and fore-prized) To have and to hold the ſaid Lands, Tenements, and all other the Premiſſes with the Appurtenances (except before excepted) unto the ſaid *R. E.* and to his heirs males incorrupt within the fourth degree of Conſanguinity, according to the ancient Cuſtome of the ſaid Mannor. And if it happen that the ſaid *R. E.* do deceaſe before the ſaid Surrender made as is aforeſaid, Then to have and to hold the ſaid Premiſſes, with the appurtenances, to the heirs of the ſaid *R. E.* which ſo ſhall ſurrender the ſame, and

to

to his heirs males incorrupt within the fourth degree of Conſanguinity, &c.

An Award, reciting that either of the Parties ſtand bound to other to perform the Award; and that the Award is made before the prefixed time in the Obligation, and with the full conſent of both the Parties.

TO all Chriſtian People, to whom this preſent Writing indented of Award ſhall come, *R.W.* and *R.C.* ſend greeting in our Lord God everlaſting. Know ye, That whereas Variance, Strife, Debate and Controverſie hath heretofore been had, moved and ſtirred between *A.B.* of *C.* and *D.E.* of *F.* of, for, and concerning the right, title, intereſt, uſe, poſſeſſion, and occupation of, &c. for the appeaſing and ending whereof, either of the ſaid parties by their mutual aſſents, conſents and agreements, have ſubmitted, compromitted, and bound themſelves either to other by their ſeveral Writings Obligatory, bearing date, &c. in the ſumme of, &c. to ſtand to, abide, obey, obſerve, perform, fulfill and keep the Award, Arbitrement, Ordinance, Doom, and Judgment of us, &c. *Arbitrators* indifferently elected and choſen between the ſaid parties to arbitrate, order, &c. of, and for the premiſſes, as by the ſaid ſeveral Obligations, with conditions for the performance thereof

of more at large appeareth. Whereupon we the ſaid *Arbitrators* taking upon us the labour, buſineſs and charge of the ſame Award, and willing to ſet the ſaid parties at a final peace, unity and concord, for, and concerning the Premiſſes, have by good advice and deliberation ſeen, heard, & throughly examined both their titles, allegations, evidences and proofs, in, and to the ſaid Premiſſes; and thereupon before the day and time appointed unto us by the ſaid Obligations, for the making, giving up, and finiſhing of the ſaid Award; we the ſaid *Arbitrators* by and with the full Aſſent, Conſent and Agreement of both the ſaid Parties, do make, publiſh, declare and give up this our preſent Award between the ſaid Parties of, for, and concerning the premiſſes, in manner and form following: Firſt, we award, ordain, doom and judge, That, &c. Alſo we award, &c. And finally, we award, ordain, doom and judge, &c. In witneſs whereof, we the ſaid *Arbitrators*, and alſo both the ſaid parties to the Award, have interchangeably put our Hands and Seals, the Tenth day of, &c. in the twentieth year of the Reign of, &c. by the grace of God of *England*, &c. King, Defender of the Faith, &c.

Pleadings in Arbitrement.

The Defendant pleads that the Arbitrators made no Award before the day ſpecified in the Condition.

ſſ. ET predictus defendens in propria perſona ſua veñ et defend vim & injur &c. Et petit auditum ſcripti predicti et ei legitur &c. petit etiam auditum Conditionis ejuſdem ſcripti et ei legitur in hec verba. *The Condition of the Obligation above written is ſuch, That if the above-bound* A. B. *his Executors and Adminiſtrators, and every of them for his and their parts in all things do and ſhall well and truly ſtand to, obey, perform, fulfill and keep the Award, Arbitrement, Order, Rule, Doom, Judgment and final Determination of* R. B. & W.P. *Arbitrators indifferently choſen nominated and appointed as well on the part and behalf of the ſaid* A.B. *on the one part, as on the part of the above-named* C.D. *on the other part, to arbitrate, order, award, judge of and determine all and all manner of Actions,*

Actions, Suits, Debts, Accounts, Treſpaſſes, Controverſies and Demands whatſoever had, moved or depending, or which might have been had or moved between the ſame parties at any time before the date of the Obligation above-written, That then the aforeſaid Obligation to be void, or elſe to ſtand in full force and vertue. Quibus lectis & auditis idem defendens dicit qđ predictus querens accōnem ſuam predictam inde verſus eum habere non debet Quia dicit qđ predicti Arbitratores nullum fecerunt Arbitrium ordinationem neq; judicium de et ſuper premiſſis in Conditione predicta ſpecificat nec de aliqua inde parcella ante predictum Feſtum Paſche Et hoc paratus eſt verificare Unde petit judicium ſi predictus querens actionem ſuam predictā inde verſus eum habere debeat &c.

The Plaintiff in his Replication ſets forth the Arbitrement, and aſſigns the breach of it ſpecially.

ſſ Et predictus querens dicit qđ ipſe per aliqua p p̄dictum defend ſuperius placitando allegata ab actione ſua predicta habend precludi non debet quia dicit qđ poſt confectionem ſcripti predicti et ante predictum Feſtum Paſche ſcilicet (tali die et Anno) predicti Arbitratores accepto ſuper ſe onere Arbitrii ordinationis & judicii predict' vocatiſque coram eis partibus predictis

dictis Auditisq; eorum queremoniis & responsis habitis & superinde tractatis dilligenter & mature de & super premissis apud D. in Com. B. arbitrati fuerunt ordinaverunt & adjudicaverunt qđ predictus defendens solveret seu solvi faceret prefat querenti viginti libras modo & forma sequen videlicet quinq; libre inde &c. (recitando l' Arbitrement) Et idem querens protestando qđ predictus defendens non solvit eidem querenti aliquam denariorum summam ad aliqnod Festum Festorum predictorum secundum formā Arbitrii p̄d solvend pro placito idem querens dicit qđ predictus defendens non solvit eidem querenti quinque libras ad predictum ultimum Festum Natalis Domini juxta formam & effectum Arbitrii predicti Et hoc paratus est verificare Unde petit judicium & debitum suum predictum una cum dampnis suis occasione detentionis debiti illius sibi adjudicari &c.

The Defendant by his Rejoynder maintaines his Plea, and takes Issue upon nullum fecerunt Arbitrium.

ſſ Et predictus defendens dicit qđ predicti Arbitratores nullum tale fecerunt Arbitrium Ordinationem neque judicium de & super premissis ante predictum Festum Pasche in forma qua predictus querens superius

perius allegavit. Et de hoc ponit se super Patriam Et predictus querens similiter Ideo preceptum est vic' qd venire faciat hic in Crastino Sancte Trinitatis duodecim &c. per quos &c. Et qui nec &c. ad recognoscend &c. Quia tam &c.

The Defendant pleads, That the Arbitrators made an Award in Writing under their hands and Seals ready to be delivered to the Parties, Which Award was generally performed.

If ET predictus A.B. per C.D. Attornatum suum venit & defendit vim et injuriam quando &c. Et petit auditum scripti predicti Et ei legitur &c. petit etiam auditum Conditionis ejusdem scripti Et ei legitur in hec verba, The Condition &c. Quibus lectis & auditis idem def. dicit qd' predictus Quer. actionem suam predictam inde versus eum habere non debet Quia dicit qd' predicti E. F. & G. H. Arbitratores in Conditione predicta superius mentionat' post confectionem scripti predicti & ante pred' primum diem M. in Conditione predicta superius specificat' scilicet xxx. die Aprilis anno Regni Dom. Regis nunc vicessimo apud B. pred' accepto super se onere abitrii ordinationis & Judicii predictorum de & super premissis in Conditione predicta supe-

ſuperius mentionat' per quoddam ſcriptum ſuum Arbitrij ſub manibus et ſigillis ſuis utriq; partium predictarum parat deliberan' arbitraverunt qd predictus Quer' p injuſtis ſectis ſuis que ipſe à tempore in tempus commenſat et p̄ſecut' fuit verſus predictos J. K. et L.M. et predictum def. ſolveret eiſdem J.K. et L.M. et predicto def. ſummam 20 l. ad vel ſuper decimum diem J. tunc prox' ſequen ad vel in tunc domo cujuſdam O.P. in B. predict' Item Arbitratores predicti arbitraverunt qd predictus Quer' ad vel ante predictum decimum diem J. deliberaret et cancellaret quoddam aliud ſcriptum obligatorium in quo p̄dictus L.M. ante tempus illud obligat' fuit eidem Quer' in decem libris gren dat' (tali die et Anno) et p̄ eo quod tunc apparebat eiſdem Arbitratoribus quod Conditio ejuſdem performat' fuit. Item Arbitratores p̄dicti arbitraverunt et ordinaver' qd cum p̄dicti J.K. L.M. et def. obtinuiſſent conceſſionem [anglice *a Grant*] a diverſis perſonis que fuer' les *Patentees* dicti domini Regis nunc de tot' ill' Emolument' Commoditat' et forisfactur' Recogn predicti Quer' et fide-juſſorum ſuorum [Anglice *Sureties*] forisfact' [anglice *forfeited*] p̄ ejus non comparentia ad tunc ult' hiemales Aſſiſas [anglice *Lent Aſſizes*] exiſten in toto lxxx. li. predicti J.K. L.M. et def. p̄ conſiderationibus predictis ſurſum-redderent [Anglice *yield up*] predicto quer' totum jus ſuum in

eadem et exonerarent predictum Quer̃ a forisfactura recognitionis predicte & solverent custag̃ (angiice *the Costs*) ea occasione expendit Et deniq; Arbitratores predicti arbitraverunt et ordinaverunt qd̃ ad vel ante (talem diem & annum) partes pred̃ sigillarent & deliberarent generales relaxationes alter alteri & interim omnes secte & controversie inter eos cessarent prout per predictum scriptum arbitrij sub manibus et sigillis Arbitratorum predictorum hic in Cur̃ plat̃ plenius liquet & apparet Et predictus def. dicit qd̃ ipse & predicti J. K. et L.M. et quilibet eorum a tempore in tempus ac ad omnia tempora post confectionem scripti arbitrij predicti bene et fidelit̃ performaverunt perimpleverunt et custodiverunt omnia & singula in Arbitrio p̃dicto content̃ ex parte pred̃ def. et ipsorum J. K. et L. M. performand̃ perimplend̃ & custodiend̃ secundum formam et effectum Conditionis predicte Et hoc parat̃ est verificare unde petit judicium si p̃dictus Quer̃ actionem suam predictam inde versus eum habere debeat &c.

The

The Plaintiff Replyes, That the Defendant did not discharge him of the Forfeiture of the Recognizance according to the Award.

ſſ ET predictus Quer̄ dicit qd̄ ipſe per aliqua p̄allegata ab actione ſua predicta habend̄ precludi non debet Quia dicit qd̄ bene et verum eſt qd̄ predicti Arbitratores in Conditione predicta ſuperius nominat̄ per eorum ſcriptum arbitrij predicti (inter alia) ordinaverunt & arbitraverunt qd̄ p̄dicti J.K. L.M. et Def. p conſideratiõ in ſcripto Arbitrij p̄dicti ſuperius mentionat̄ ſurſum redderent (anglice *yield up*) totum jus ſuum in Recognitione pdicta in predicto ſcripto Arbitrij p̄dicti ſpecificat̄ & exonerarent ipſum predictum Quer̄ de forisfactura ejuſdem Recognitionis & ſolverent cuſtag̃ ea occaſione expendit put pred̄ def. ſuperius allegavit Sed idem Quer̄ ulterius dicit quod predicti J.K. L.M. et def. ſeu eorum aliquis licet poſt confectionem ſcripti Arbitrij predicti & ante diem impetrationis brevis originalis ipſius Quer. (ſcil't tali die & anno) per p̄dictum Quer. apud B. p̄d reqiſit̄ fuer̄ non exoneraverunt nec eorum aliquis exoneravit ipſum p̄dictum Quer̄ de forisfactura Recognitionis p̄dict̄ ſicut ipſe ſeu unus eorum ipſum predictum Quer̄ de eadem Recogñ exoneraſſe debuiſſet ſecundum formam & effectum ſcripti Arbitrij

predicti Et hoc paratus est verificare Unde petit judicium & debitum suum predictum una cum dampnis suis occasione detentionis debiti illius sibi adjudicari &c.

The Defendant Rejoyns, That he did discharge the Plaintiff of the Recognizance according to the Award.

ff ET predictus def. dicit qd ipse idem def. exoneravit predictum Quer. de forisfactura Recognitionis predicte prout idem Def. et predicti J. K. & L. M. seu un⁹ eorum de eadem Recognitione exonerasse debuisset secundum formã & effectum Arbitrij predicti Et de hoc ponit se super Patriam, &c.

The Plaintiff Demurs specially, for that the Defendant doth not particularly shew how he was discharged of the Recognizance.

ff ET predictus Quer' dicit qd pdictum placitum predicti def. superi⁹ placitat' min⁹ sufficien' in lege existit ad ipsum Quer' ab actione sua predicta vers⁹ ipsum def. habend' precludend' Quodque ipse ad placitum illa modo & forma predictis placitat. necesse non habet nec per legem terre tenetur respondere Et p causa morationis in lege idem Quer' secundum formam Statuti

tuti ostendit has causas sequen' videl't pro eo quod predictus def. non sufficient. respondit ad predictum placitum predicti Quer' superi' replicando placitat' nec cognoscit neque dedicit materiam in placito illo allegat' neque monstrat quomodo exoneravit Recognitionem predictam in Arbitrio predicto superi' placitando mentionat Et hoc parat' est verificare Unde petit judicium et debitum suum predictum una cum dampnis suis occasione detentionis debiti illi' sibi adjudicari &c.

The Defendant joyns in Demurrer.

ET predictus def. unde ex quo ipse sufficien' materiam ad ipsum Quer' ab actione sua vers' ipsum def. habend' precludend superi' allegavit quam quidem materiam predictus Quer' non dedicit nec ad eam aliqualiter respondit set verificationem illam admittere omnino recusat Idem def. petit judicium et quod predictus Quer' ab actione sua predicta habend' precludatur &c. Et quia Justic' hic se advisare volunt de & super premissis priusquam &c.

The Defendant pleads, That the Arbitrator did not deliver the Award according to the Submiſſion.

ſſ ET predictus A. B. p N. H. Attorñ ſuum veñ & defend vim & injur quando &c. Et petit audiť ſcripti predicti Et ei legitur &c. Petit etiam audiť Conditionis ejuſdem ſcripti et ei legitur in hec verba. ſſ *The Condition of this Obligation is ſuch, That if the above bounden A.B. his Heirs, Executors or Adminiſtrators, or either of them do well and truly ſtand to, perform, fulfill and keep the Award and Order of* Robert Smith *Arbitrator indifferently elected and choſen as well on the part and behalf of the above named C.D. as on the part and behalf of the above bound A. B. to Arbitrate, Award, Order and Judge of and upon all and all manner of Actions, Suits, Controverſies, Debts, Accounts, Treſpaſſes and Demands whatſoever had, moved and depending between the ſame parties at any time before the date above-written, ſo as the ſame Arbitrator do make his Award under his hand and ſeal in writing upon and before the laſt day of* January *next enſuing the date of the Obligation above written, and one part of the Award in writing under the hand and ſeal of the ſame Arbitrator do deliver to the ſaid A. B. or his Aſſigns, and the other to the ſaid C. D. or his Aſſigns, That*

then

then this preſent Obligation to be void; or elſe to ſtand in full force and vertue. Quibus lectis & audit idem A. B. dicit qd̄ predictus C. D. actionem ſuam predictam inde verſus eum h'ere non debet quia dicit qd̄ poſt confectionem ſcripti predict̄ & ante predictum primum diem M. in conditione p̄dict̄ ſuperius mentionat̄ ſcil't xxx. die A. Anno xvij. ſupradicto apud T. p̄dict̄ in Com̄ p̄dict̄ Arbitrator predict̄ in conditione predict̄ ſuperius nominat̄ on⁹ arbitrij ordinis & Judicij pred̄ ſuper ſe ſuſcipiens p̄ quoddam ſcriptum ſuum arbitrij ſub manu & ſigillo ejuſdem Arbitratoris quod quidem Arbitrium p̄dictus A.B. ꝓfert hic in Cur̄ cujus dat̄ eſt eiſdem die & anno adtunc & ibidem arbitravit & ordinavit int̄ pred̄ A.B. et p̄fat̄ C. D. de & ſup p̄miſſis in conditione pred̄ ſupius ſpec' modo & forma ſequen̄ ſcil't Imprimis Arbitrator̄ pred̄ per ſcriptum Arbitrij pred̄ arbitravit & ordinavit qd̄ ipſe prefat̄ A. B. ſolveret ſeu ſolvi cauſaret p̄fat̄ C. D. ad vel ſuper xxiiij diem J. p̄x̄ ſequen̄ dat̄ ſcripti Arbitrij predicti in vel ad Porticum borealem Eccleſie Parochialis de Q. in Com̄ K. pred̄ ſummam decem librarum legalis monete Anglie in plena ſatisfactione ꝓ omnibus debitis ſumma & ſummis monete quibuſcunq; aliquo modo debit̄ a prefat̄ A.B. pred̄ C.D. Ac etiam p̄d̄ Arbitrator̄ p Arbitrium predictum ordinavit qd̄ pred̄ A. B. ab & poſt requiſition̄ ei

fact̄ p̄ p̄fat̄ C.D. sigillaret et ut factum suum deliberaret eidem C.D. un̄ sufficien̄ relaxation̄ (Anglice *Release*) in lege de omnimodis comptis sectis controversiis debis tāsgr & demand̄ quibuscunq; habit̄ mot̄ vel depcnden̄ inter p̄dictos A.B. & C.D. ad aliquod tempus ante xxiij. diem M. tunc ult̄ elaps. deniq; Arbitrator p̄d̄ p̄ scriptum Arbitrium p̄d̄ arbitravit & ordinavit q̄d̄ pred̄ C. D. ab & post requisition̄ ei fact̄ p̄ predictum A. B. sigillaret & ut factum suum deliberaret prefat' A. B. unam sufficien' relaxation' in lege de omnimod' compis sectis controversiis debitis transgr' & demand' quibuscunq; habit̄ mot' vel penden' inter predictos C. D. & A.B. ad aliquod temp⁹ ante xxiiij. diem M. tunc ult' elaps' prout per scriptum arbitrij pred' pleni⁹ liquet & apparet Et pred' A. B. ulteri⁹ dic' qd̄ pred' Arbitrator in conditione pred' superi⁹ nominat' deliberavit scriptum Arbitrij predict. eidem C. D. ante pred. xxiiij. diem J. in script' Arbitrij pred. superi⁹ mentionat. et ante pred C.D. requisivit ipsum A. B. sigillare et ut factum suum deliberare aliquod scriptum relaxationis secundum formam & effectum Arbitrij pred. Et hoc parat⁹ est verificare Unde petit judicium si predictus C.D. actionem suam predictam inde versus eum habere debeat &c.

In Debt upon a Bond with Condition for performance of an Arbitrement, after Oyer *of the Condition the Defendant pleads the Arbitrement* in hec verba, *in which the Defendant Covenants to assure such Freehold Lands, and surrender such Copyhold Lands (amongst other things) to the Plaintiff and his Heirs.*

ſſ Quibus lectis & auditis idem Def. dicit qđ actio non &c. quia dicit quod poſt confectionem ſcripti p̄dicti & ante predict̄ ultimum diem J. in indorſamento predicto ſuperius ſpecificat. videl't 27 die J. Anno &c. ſupradicto apud L. in Parochia & Warda predictis arbitratores predicti accept̄ ſup̄ ſe onere arbitrij ordinationis & Judicij predict. & p̄ eorum ſcriptum Arbitrij indentat̄ utriq; partium predict. eodem 27 die J. ibidem deliberat. unam partem cujus quidem ſcripti arbitrij indentat. ſigillis predictorum Arbitratorum ſignat. idem D. hic in Curia ꝓfert cujus dat̄ eſt eiſdem die & Anno ibidem arbitrat. fuerunt ordinaverunt & adjudicaverunt inter prefat' Queř & ipſum Def. de & ſup̄ premiſſis in indorſ. predicto ſuperius ſpecificat. modo & forma ſequeñ (viz.) Imprimis dicti arbitratores arbitrat̄ fuerunt, & dict' def. ꝓ

ſc

se Hered. & Executoribus suis conveniſſet ad & cum dicto quer̄ qđ ipse idem defend. aut hered. sui ante Festum sancti B. tunc px' sequen̄ post datum predicti scripti arbitrij p feoffament' (si alique fuissent terr̄ vocat̄ *Charter Lands*, aut tenement̄ surſumreddend̄) & alias legittimas & perfect. vias & mod̄ quoad necesse foret sufficienter assuraret & concederet dicto quer̄ & hered' suis ad usum ejusdem quer̄ & hered' suorum imperpetuum secundum cons. Manerior̄ omnia ill' terr̄ & hereditamenta tam libera si aliqua talia essent quam nativa jacen̄ & existen̄ in Hamletto de H. in Parochia de B. aut alibi in dicto Com̄ S. que quidem T. tunc olim tenebat, Et preterea legittimam assuranc' conveiasset aut conveiari causasset dicto def. & hered' suis (except̄ & forprisat ab & ex arbitrio illo & conventione *Magno le Haw* tunc in possessione O. S. Ar̄ et etiam omnib⁹ ill. terris tenement̄ & hereditament̄ tent̄ p copiam rotulorum Cur̄ que tunc fuerunt J. B. jacen̄ & existen̄ infra Parochiam de W. & B. seu alibi existen̄ ad aliquod tempus in usu vel possessione dicti def. in dicto Com̄ S.) Et dicti Arbitratores arbitrati fuerunt & dictus quer̄ p idem scriptum Arbitrij conveniſſet & concessisset p se hered & executor̄ suis ad & cum dicto Def. solvere seu causare solvi in consideratione Assurancie p̄missor̄ in forma p̄dicta fiend̄ sum̄am CC. l. dicto def. modo & forma sequen̄ (videl't) p-

manibus

manibus ad ſigillationem & deliberationem predicti ſcripti arbitrij Clx.l.(quam quidem ſummam Clx. l. dictus Def. p idem ſcript. arbitrij cognoviſſet ſeipſum adtunc recipiſſe de predicto queř Et inde clare acquietaſſe dictum Queř & hered' ſuos imperpetuum p pred ſcriptum Arbitrij) Et qd dictus quer. Hered' Execut aut Aſſignī ſui ſolverent aut cauſarent ſolvi aut legittime offerent ad ſolvend' dicto Def. aut Aſſignī ſuis ſuper idem Feſtum Sancti M. qui eſſet in Anno Dñi 1550. quinq; libř in porticu Eccleſie Parochialis Sancti Petri in D. in Coīn Suff. exiſteñ ex parte auſtrali ejuſdem Eccleſie, aut in loco ubi idem porticus ſtaret inter horas primam & quartam poſt merediem ejuſdem diei, & in die dicti Feſti tunc ꝑx' ſequeñ ad eundem locum & inter ſimiles horas diei ejuſdem Feſti 5 l. & ſic annuatim abinde in die Feſti Sancti M. Archiepiſcopi ad locum predictum & inter ſimiles horas ut p̄dictum eſt diei cujuſlibet hujuſmodi Feſti ſummam quinq; libř quouſq; xl. l. reſid' dictař CC. l. plenarie ſoluť eſſent, Et inſuper arbitrať fuiſſet p p̄dictos Arbitratores, et predictus Queř ꝑ ſe Heredibus & Executoribus ſuis conveniſſet & conceſſiſſet ad & cum dicto Def. p predictum ſcriptum Arbitrij quod dictus def. ante Feſtum Sancti M. Archiepiſcopi tunc ꝑx' ſequeñ debito modo probaret p bonos indifferentes ſufficientes & legittimos teſtes deponend' ſuper eorum ſacramenta

cramenta coram Arbitratoribus predictis virtute cujusdam Commissionis prosequend' extra Cur' Cancellar' & pfat' Arbitratoribus direct' ad custag' dicti Def. quod dictus Quer' recipisset de dicto Def. summas xx. l. in quibusdam pecunijs auri vocat' Crewisadoes xx. l. in Pystoletts, & 10 l. in alia moneta que quidem 50 l. allegat' fuer' solut' fuisse per pred' Def. apud D. ad aliquod tempus aut tempora à sigillatione & deliberatione obligationis in qua dictus Def. obligat' stet-erit dict' quer' in summa 300 l. geren' dat. xxj. die M. Anno &c. quod tunc post hujusmodi ꝓbatione sic plene fact' & notitiam inde sufficien' dat. dicto Quer' Executor' aut Administr' suis pdictus Quer' Hered' Executores aut Assign' sui solverent aut solvi causarent dicto Def. tantum de dictis separalibus summis ul' recitat' quantum idem Defend' sic ꝓbaret p ipsum solut' fuisse dicto Quer' à confectione ejusdem obligationis modo & forma sequen' viz. in die Festi Annuntiationis &c. qui esset tunc ꝓx' post notitiam sibi dat' de ꝓbatione pred' 5 l. ad porticum predictum inter horas predictas ejusdem diei & annuatim abinde in die Festi Annuntiationis beate Marie 5 l. in loco predicto & inter horas ut pred' est ejusdem diei cujuslibet hujusmodi Festi quousq; dicta summa sic existen' sufficient' ꝓbat' fuisse solut' dicto quer' plene resolut' esset pred' def. Execut' aut Assign' suis Et etiam preterea

arbi-

arbitrat̃ fuiſſet p̃ pred' Arbitr̃ & p̃ utriuſq; partium pred' agreat̃ quod dictus Quer̃ & hered' ſui pmitterent dictum Def. p̃cipere & gaudere p̃ficua premiſſor' uſq; ad feſtum Sancti Michaelis Archangeli p̃ eiſdem & in medio tempore idem Def. efficeret quantum in ſe fuiſſet omnes boſcos ſubboſcos & Arbores creſceñ ſuper p̃miſſa aut aliquam p̃cell' inde p̃ſervand. eſſe a ſucciſione deſtructione ſpoliatione aut vaſtatione. Et etiam quod idem Def. ſolveret aut ſolvi cauſaret aut aliter exoneraret omnia reddit' & ſervitia debita aut debeñ p̃ eiſdem p̃miſſis aut aliqua p̃cella eorundem, vel ad aliquod tempus ante pred' feſtum Sancti Michaelis tunc p̃x' ſequeñ Et etiam quod dictus Def. haberet & acciperet omnem boſcum qui ante tunc ſucciſum fuiſſet et adtunc ſucciſum jacuiſſet in & ſup̃ aliqua parte p̃miſſorum ad ſuum p̃prium uſum Ita quòd dicti boſci aſportat̃ forent de & ab eiſdem terris ante dictum Feſtum Sancti M. tunc p̃x' ſequeñ, & ita quòd *les Springs* pred' boſcorum & arborum & quelibet eorũ ſervat̃ eſſent a deſtructione & dampno p̃ defalt' aſportationis tempore oppurtuno dictorum boſcorum aut ſubboſcorum ſic exiſteñ tunc ſucciſ. Et etiam dicti Arbitratores arbitrat̃ fuiſſent per p̃dictum ſcriptum Arbitrij, & idem Def. p̃ ſe Hered̃ & Executor̃ ſuis conveniſſet & conceſſiſſet ad & cum dicto Quer̃ p̃ idem ſcriptum quod ſi una paſtura vocat̃ *Great L.* & alia Paſtura

vocat̃

vocat' *Little L.* & Pratum vocat' C. ꝑ quorum titulo contraversia fuisset tunc antea mot' int' dict' Def. ex una parte & quendam J. R. ex altera parte, & que tenebantur de O. H. Ar' ꝑ Copiam rotulor' Cur' ut de Manerio suo de B, aut si aliqua pars sive ꝑcell' terre tenement' & hereditament' in eodem scripto Arbitrij p̄nominat' contingeret evinci aut recupari a possessione dicti Quer' Hered' & Assign suorum ratione alicujus Tituli crescen ante dat' ejusdem Arbitrij vel ante Assuranc' vel conveianc' inde factam dicto Quer' secundum veram intentionem Arbitrij p̄dicti (except' p̄except') quod tunc dictus Def. Hered' Execut' & Assign sui super rationabile requisitione ejusdem Quer' Hered' Execut' & Assign suor' solverent aut solvi causarent dicto Quer' Hered' Executoribus & Assign suis in plenam recompensationem & satisfactionem de & ꝑ qualibet acra que sic contingeret evinci aut recupari ab eodem Quer' Executor' & Assign suis tantum legalis monete Angl' quantum precium cujusllibet acre dimidij acre sive plus sive minus quantitatis terre de p̄dictis p̄missis aut aliqua ꝑcell' inde sic existen tunc postea evict accomputand' secundum rat' xlv. s. ꝑ qualibet acra in toto attingeret & sic juxta ratum ill' ꝑ majore aut minore quantitate Acr' que contingeret sic evinci, Et p̄terea quod idem Def. Hered' Executor' aut Assign sui ad ejus aut eorum ꝓpria custagia facerent

rent omnia hujusmodi onera quantum in se vel ill' fuisset de tempore in temp⁹ ꝑsequi manutenere defendere & terminare titulum ad & ꝑ terris & tenꝫtis ꝑcell' pmissorum que tunc in questione pendissent & controversione fuissent inter eundem Def. & J.R. aut aliquem alium infra Cur alicujus dñorum Maneriorum de W. & B. aut alicujus eorum Et si dictus Quer Hered aut Assign sui non possint ꝑ mediationem alicujus tituli aut clamei fact alicui parti sive ꝑcell' pmissorum eadem gaudere aut aliquam ꝑcell' inde secundum intentionem predicti scripti Arbitrij & non reciperet nec haberet ejus aut eorum ꝓficuum & securam Assuranc' inde juxta intentionem Arbitrij pred' ante Festum Sancti M. tunc ꝓx' sequen dat ejusdem Arbitrij quod tunc dictus Def. Hered' aut Executores sui solverent aut solvi causarent idem Quer Executor aut Administrat suis super rationabile requisitione inde sibi aut ill' fiend' tanꝫ legalis monete Angl' quantum terre & tenꝫta quib⁹ idem Quer aut Assign sui gaudere non possint ꝑ mediationem clamei dicti J. R. aut Hered' sui alicujus ꝑsone vel ꝑsonar valuand' secundum ratum 45 s. ꝑ qualibet acra, Et etiam quod dictus Def. & hered ejusdem Def. ad omne & quodlibet temp⁹ & tempora extunc imposterum facerent cognoscerent & pmitterent fieri quelibet act & res que tunc essent rationabilit' devisat' & requisit' per dictum

Quer

Quer̄ Hered' aut Assign̄ suos, aut p ejus vel eorum consilium eruditum ad custagia in lege ejusdem Quer̄ Hered' Execut' aut Assign' suor̄ p meliore & perfectiore Assurranc' dictorum ten̄t & terr̄ aut alicujus parcell' inde fiend' secur̄ dicto Quer̄ Hered' & Assign' suis aut aliquib⁹ eorum secundum cons. Manerior̄ Et etiam quod pred' terr̄ ten̄ta & hereditamenta pred' & quelibet pars & parcell' inde ad omnia tempora tunc imposterum clare assent exonerat' de & ab omnib⁹ priorib⁹ barganijs concessionibus sursum redditionib⁹ titulis arreragijs reddituum finib⁹ forisfactur̄ dimissionib⁹ & incumbranc' habit' fact' ꝑcurat' pmiss. aut fact' per pred' Def. (except̄ titulo & dote cujusd' Marie uxoris p̄dicti Def. in & ad premissa aut aliqua inde parcell') Et etiam redditionibus cons. & servitijs tunc abinde incurrend & incidend debit̄ Capital' Dño aut Dñis feodi aut feodor' de premissis & qualibet parte & parcell' inde. Et etiam quod si aliqua terr̄ ten̄ta aut hereditamenta pred' existen' nativa non sursum redd' accept' fuissent p dictum Def. set adtunc remansissent in manib⁹ Dñi non sursum accept' qd tunc idem Def. aut hered. sui ante pred Festum Sancti M. tunc ꝑx' sequen' facerent quantum in se fuissent ad componend' cum Dño aut Dñis cujuslibet hujusmodi nativor' terr̄ & ten' ꝑ suo & eorum fine & finib⁹ ꝑ eisdem & ad ejus & eorum

ꝑpria

ꝑpria cuſtag facerent quantum in ſe fuiſſent obtinend' perfectam admiſſionem aut perfect' dimiſſ. inde & de qualibet inde parcell' in feodo ſimplici ſecundum conſ. aut conſuetudines dicti Manerij aut Manerior' unde alique eorund' nativorum terr' aut tenement' ſic exiſten' non ſurſum accept' tent' & eo fact' expeditione convenien' faceret legalem & perfect' ſurſum-redditiouem aut ſurſum-redditiones ad uſum dicti Quer' hered' & aſſign' ſuorum de omnib' ill' terr' & ten'tis ſecundum veram intentionem Arbitrij ꝑdicti, Et etiam qđ idem Def. Hered' vel Aſſign' ſui ante dictum Feſtum Sancti M. tunc ꝓx' ſequen' omnia fact. evidenc' Copias Cur' rot' & alia ſcripta que idem Def. tunc habuiſſet aut aliquis alius ad ejus uſum aut ꝑ ejus deliberationem habuiſſet concernen' ꝑmiſſa aſſurand' dicto Quer' in forma pred' aut aliquam partem aut parcell' inde aut ad q̄ ſine ſecta in lege idem Def. aut hered' ſui legittime ꝓvenirent Et etiam ſimiliter dict' Def. ſolveret & cauſaret ſolvi dicto R.F. Ar' ante Feſtum Sancti B. tunc ꝓx' ſequen' poſt dat' ejuſdem ſcripti Arbitrij ꝓ & in parte debi qđ pred' Quer' debuiſſet eidem R.F. 10 l. legalis monete Angl' Et ſimiliter ſolveret aut cauſaret ſolvi R.N. gen' ante Feſtum Sancti B. Apoſtoli tunc ꝓx' ſequen' alia 10 l. legalis monete Angl' ꝓ debo quod idem Quer' debuiſſet dicto R.N. Et de & ꝓ eiſdem ambab' ult. recitat' ſummis monete inde indempnem ſervaret

varet dictum Quer. Heredes, Executores & Administratores suos imperpetuum Et etiam Arbitratores pred' insuper arbitrat. fuerunt & mutuo convent. & agreat' erat inter ptes pred' quod utraq; eorund. pcium p eorum scripta relax̃ de omnib⁹ actionib⁹ psonalib⁹ sectis psonal' debit. transgr. & demand. bonorum & catallorum psonalium quecunq; fuissent habit' mot' aut occasionat. per utramq; pcium p̄dictarum vers⁹ alterum aut inter easdem ptes dependen' p aliqua materia aut causa crescen' aut contingen' ad aliquod temp⁹ ante xxxiij. diem tunc presentis mensis J. put p idem scriptum Arbitrij pleni⁹ apparet quoad aliqua terras tenementa & hereditamenta aut ter' vocat. C. que fuissent libera assurand' presat. Quer̃ & hered' suis idem Def. dicit quod ipse assurare non potuit quia dic' qd̄ nulla fuer' talia terra tenementa hereditamenta aut ter̃ vocat. C. p quod aliquo modo assurare potuisset secundum formam & effectum Arbitrij predicti, Et quoad omnia ter̃ tenementa & hereditamenta sua que fuer' nativa aut tent. p copiam rot' Cur' de Manerijs de H. & W. jacen' et existen' in Hamlett de H. & Parochijs de B. W. seu alibi in dicto Com̃ Suff. idem Def. dicit quod ipse post confectionem p̄d̄ scripti Arbitrij & ante p̄d̄ Festum Sancti B. Apostoli in arbitrio predicto superi⁹ spec' videl't ad Cur. Manerij de H. in dicto Com̃ S. 21 die J. Anno &c. supradict. sursum-redd. in manus Domini ejusdem

The Defendant's Plea, viz. That he hath performed the Arbitrement specially.

ejuſdem Manerij xj. acr. & dimidium acr̄ prati unum clauſum paſture cont̄ p eſtimationem vij. acr̄ paſture ſive plus ſive min⁹ vocat. B. aliud Clauſum continen' p eſtimationem 6. acr. jampnorum & bruere habend. & tenend. pred. 11 acras & dimidium acre paſture &c. p̄fat. quer. & hered. ſuis per copiam Cur. rot. de predicto Manerio de H. ad op⁹ & uſum dicti quer. et hered. ſuorum imperpetuum ſecundum formam & effectum p̄dicti ſcripti Arbitrij Et etiam idem Def. dic' qd̄ ipſe ad Cur. Manerij de W. tent. xij. die A. Anno &c. ſupradict. ſurſum reddidit in man⁹ Dñi ejuſdem Manerij 9. acras paſture vocat. &c. habend. & tenend. prefat. 9 acras paſture &c. cum p̄tin. prefat. Quer. & hered. ſuis p Copiam Cur. Rot. de predicto Manerio de W. ad op⁹ & uſum pred. Quer. & hered. ſuorum imperpetuum ſecundum formam & effectum Arbitrij pred̄ Et etiam idem Def. ulteri⁹ dic' qd̄ ipſe poſt confectionem pred. ſcripti Arbitrij & ante pred. Feſtum Sancti Mich. p̄x' ſequen̄ dat' pred. ſcripti arbitrij videl't xxix. die J. Anno &c. ſupradict. dedit p̄fat. O. H. Ar' unum Spadonem in plenam ſatisfactionem omnium reddit. ſervic. & aliorum onerum p̄ p̄dictis premiſſ. & qualibet inde parcell' debit. deben' ante pred. Feſtum Sancti M. ſecundum formam & effectum Arbitrij pred̄ quem quidam Spadonem pred̄ O. accepit & ad ſe agreavit, Et ulterius idem Def. dicit

qđ ipſe ad Curiam predicti Manerij de H. tent' 23 die S. Anno &c. ſupradict. ſurſum reddidit in man^{9} Dñi dicti Manerij de H. tres ſepal' pecias tre habend. & tenend. pred quer. & hered. ſuis p copiam Cur. rot. pred. Manerij de H. ad op^{9} & uſum dicti quer. & hered. ſuorum imperpetuum que ſunt omnia & ſingula terra tenementa & hereditamenta nativa, aut tent. p copiam Cur. rot. cum pertin. que fuer. predicti Def. jacen. & exiſten. in dictis Parochia de H. W. & B. aut alibi in dicto Com̃ Suff. (excepr. pexcept.) ſecundum formam & effectum Arbitrij predicti, Et etiam idem Def. dic' qđ ipſe ad pred. Cur̃ Manerij de W. tent. pdicto 12 die A. Annis quarto & quinto ſupradict. ſurſum-reddidit in man^{9} Domini pred. Manerij de W. ſex acras paſture jacen̄ & exiſten̄ in Parochijs de W. & B. predict. habend. & tenend. pred. 6 acras paſtur̃ cum pertin. pfat. Quer. & hered. ſuis p copiam Cur. rot. ad uſum ejuſdem quer. & hered. ſuorum imperpetuum q̃ ſunt omnia & ſingula terra tenementa & hereditamenta tent. p copiam Cur. rot. q̃ nuper fuer. J.B. jacen̄ & exiſten̄ infra Parochias de W. & B. aut alibi exiſten̄ ad aliquod tempus in uſu & poſſeſſione dicti def. in dicto Com̃ S. ſecundum formam & effectum Arbitrij predicti. Et etiam idem Def. ulteri^{9} dic. quod ipſe a pred. die confectionis ſcripti Arbitrij uſq; ad Feſtum Sancti Mich. tunc px' ſequen̄ fecit

&

& repavit omnes ſepes & foſſat' exiſten' in & circa pred. boſcum & *les Coppes* ptextu cuj⁹ quidem repationis ſepium & foſſat. pred omnes boſci & ſubboſci & arbores predict. creſcen. in & ſuper pmiſſa & qualibet inde parcell' pſervat. eſſent ab deſtructione ſpoliatione aut vaſtatione, & ab omnib⁹ alijs dampnis aliquor' Catall' Et etiam quod ipſe ſolvit omnes reddit. & ſervitia debit. aut deben. p pdictis pmiſſis & qualibet pcella eorundem ad omnia tempora a die dat. pred' ſcripti Arbitrij uſq; ad pred Feſtum Sancti M. px' poſt confectionem ejuſdem ſcripti Arbitrij Et etiam qd ipſe aſportavit omnes boſcos & ſubboſcos qui ſucciſi fuer. in & ſup pmiſſa ante Feſtum Sancti M. in temporib⁹ oppurtunis, Et etiam qd ipſe cuſtodivit & pſervavit omnia germina vocat. *les Springs* boſcorum & arborum predictorum & quamlibet eorundem de et ab omnib⁹ et omnimod deſtructione dampno & vaſtatione ratione aliquor boſcorum aut arborum Et quoad pred. paſtur vocat. *the great B. and the little B:* & pred pratum vocat' C. in Arbitrio pred. ſuperi⁹ ſpec' q ante confectionem pred. ſcripti Arbitrij fuiſſent in controverſia inter dictum Def. ex una parte & pnominat' J.R. ex altera parte & tent. de O.H.Ar p copiam Cur. rot. ut de Manerio ſuo de W. idem Def. dic. qd neq; pred due acre paſture vocat. *Great B. and Little B.* neq; pred. pratum vocat. C. aliquo tempore poſt

confectionem ſcripti Arbitrij uſq; diem impetrationis brevis originalis ipſi⁹ Quer. ſcil't tali die Anno regni Dñe Regine nunc quarto fuer. recupat. a poſſeſſione dicti quer̄ ratione tituli ſive clamei de pred. J. aut aliqua alia pſona vel pſonis ante dat. p̄d ſcripti arbitrij juxta veram intentionem Arbitrij p̄dicti, Et pred. Def. ulteri⁹ dic. qd ipſe ad ſua ꝑpria mis' & cuſtag̃ de tempore in temp⁹ quantum in ſe fuit ꝑſecut. fuit manutenuit & defendit titulum de & in omnib⁹ ill' terris teñtis & hereditamentis parcell' p̄miſſorum q̄ tunc pendiſſent in queſtione & controverſia inter eundem Def. & pred. J. R. aut aliquem alium infra Cur. dictorum Maneriorum de W. & H. aut aliquam eorundem Et etiam idem Def. dic' qd ipſe ac pred. Maria uxor ejus in omni & quolibet tempore & temporib⁹ a pred. die confectionis dicti ſcripti Arbitrij uſq; diem impetrationis brevis originalis ipſius Quer. ſcil't talem diem Anno regni Dñe Regine nunc ſecundo ſupradicto fecerunt cogñ & p̄miſer. fieri omnes & quoſlibet Act̄ & act⁹ rem & res que rationabiliter deviſat fuiſſent ꝑ pred. Quer. vel Aſſign̄ ſuos ꝑ meliore & ꝑfectiore Aſſurancie dictarum ter̄ teñtorum & ceterorum premiſſorum ſecundum formam & effectum p̄dicti ſcripti Arbitrij. Et idem def. dic. qd predict⁹ Quer̄ a p̄dicto die confectionis predicti ſcripti Arbitrij pacifice & quiete occupaver̄ & gaviſi fuer̄ omnia

nia pred̄ terras tenementa & hereditamenta & quamlibet partem & ꝑcellā inde de tempore in temp⁹ ad omnia tempora a die dat̄ pred̄ scripti Arbitrij usq; ad Festum Sancti M. Anno regni Dñe Regine nunc quarto ante quod quidem Festum pred̄ Quer̄ breve suum originale versus eum impetravit Et idem def. dic. qd pred. terre tenementa & hereditamenta sua superi⁹ spec' exonerat' & acquietat̄ fuissent ab omnib⁹ priorib⁹ barganijs concessionibus sursum-redditionibus titulis arreragijs reddit̄ finib⁹ forisfactur. dimissionibus & alijs incumbranc' quibuscunq; habit̄ mot̄ ꝑcurat̄ permiss. aut fact̄ ꝑ pred. Def. aut ꝑ aliquem alium ꝑ ejus procur̄ (except̄ ꝑexcept̄) Et etiam idem Def. ulteri⁹ dic' quod non fuerunt ulla alia terra tenementa hereditamenta nativa vel tent̄ ꝑ Copiam Cur̄ rot. de aliquibus Manerijs p̄nominat̄ dicto def. & hered. suis secundum cons. Maneriorum illorum de quibus tenebantur ante p̄dictum Festum Sancti M. tunc p̄x̄ sequen̄ dat̄ pred̄ scripti arbitrij Et etiam idem Def. dic' qd ipse ante idem Festum Sancti M. ult̄ rccitat. deliberavit dicto quer. omnia facta evidenc' Copias Cur̄ rot. & alia scripta que pred. Def. tunc habuit aut aliquis ali⁹ ad ejus usum aut per ejus deliberationem habuisset concernen̄ prꝫmissa assurand. dicto Quer̄ in forma p̄dicta & quamlibet ꝑtem & ꝑcell' inde ad que ipse sine secta in lege legittime ꝑvenire potuisset

Et insuper idem Def. ulteri⁹ dic' qd ipse solvit cuidam R. F. Aī ante pred Festum Sancti B. Archangeli tunc ꝓx' sequen dat pred scripti Arbitrij (videl't) in vigilia ejusdem Festi x. l. quas ei ante idem Festum solvisse debuit secundum formam & effectum ejusdem scripti Arbitrij (viz.) apud L. in Parochia & Warda pred. Et etiam dic' qd' ipse similit solvit cuidam R. N. gen ante pd Festum Sancti B. Apostoli (videl't) in vigilia eisdem diei alias x. l. quas ei ad idem Festum solvisse debuit secundum formam & effectum pred scripti Arbitrij (videl't) apud L. in Parochia & Warda pred Et etiam idem Def. ulteri⁹ dic' qd ipse ꝑ ejus sufficien scriptum relaxationis quod quod quidem script relaxationis idem Def. signavit sigillavit & ut factum suum pfat R. apud O. in Com S. deliberavit de & ꝑ omnib⁹ act onib⁹ ꝑsonalib⁹ sect' ꝑsonal' debitis tnsgī et demand' bonor & catallor ꝑsonalium quibuscunq; fact ante pred. 23 diem J. in Arbitrio pdicto superius spec' secundum formam & effectum Arbitrij pred. que sunt omnia & singula in Arbitrio pdicto spec' que ex parte dicti Def. sunt in aliquo ꝑimplend' custodiend' & ꝑformand', Et hꝯ parat est verificare Unde pet Judicium si Actio &c.

The

The Plaintiff Replyes, That the Defendant did not ſurrender the Copyhold (or native Lands) as he hath alledged in his Plea.

ET predict' Quer' dicit qd ipſe per aliqua pallegat' ab actione ſua pred' habend' precludi non debet quia pteſtando non cogn' aliqua p predict' Def. ſuperius placitat' fore vera p placito dic' qd pred' Def. poſt conſectionem predict' Arbitrij & ante predict' Feſtum Sancti B. in Arbitrio predicto ſuperius ſpecificat' non ſurſum-reddidit in manus Domini ejuſdem Manerij predict' 12 acras & dimidium acre terre arabilis unum clauſum paſtur' cont' per eſtimationem 7. acras ſive plus ſive minus vocat' B. ac predict. alium Clauſum continen' per eſtimationem 6. acras jampnorum & bruere put predict' Def. ſuperius allegavit. Et hoc petit qd inquiratur per Patriam. Et predict' Def. ſimiliter &c.

The

The Defendant pleads an Arbitrement before the last Continuance of the Declaration.

ſſ POſtea continuato inde ꝓceſſu inter partes pred. de pred placito p Juratores poſit inde inter eas in reſpect. hic uſq; ad hunc diem ſcil't a die Sancti Hill. in 15. dies tunc ꝓx ſequen Et modo hic ad hunc diem ven tam pred A. quer quam pred B. per Attorn ſuos pred. Et Jur. impannellat exact ſimilit' ven. Et ſuper hoc idem B. relicta verificatione ſua pred. p ipſum' ſuperius pretens' dic' quod Juſtic. hic ad captionem Jurat predict ꝓcedere non debent quia dic' quod poſt ultimam continuationem placiti pred. (videl't) poſt xv. Sancti Hill' & ante eand. xv. Sancti Hill' ſcil't in Feſto Sancti S. Anno &c. apud A. in Com predicto tam pred. Quer quam pred. Def. amicis eorum intervenien ex eorum communi aſſenſu & conſenſu poſuerunt ſe in arbitrium ordinationem & judicium quorundem F. & G. tam de tranſgr predicta quam de omnibus aliis tnſgr querelis & debit. inter ipſos ante eundem Feſtum habit mot ſive penden qui quidem F. & G. accept. ſuper ſe onere Arbitrij ordinationis & judicij pred. poſtea ſcil't in Feſto pred. apud A. pred arbitrat. fuer. ordinaverunt & adjudicaverunt de & ſuper p-miſſis

missis scil't quod pred. Def. solveret p̄fat̄ quer̄ 10s. in Festo Natalis Dñi tunc ꝓx̄ sequen. Et hoc &c. Unde pet̄ Judicium si Justic' hic ad Captionem Jurat̄ pred̄ ulteri' ꝓcedere velint Et quod p̄dict. Quer̄ ab actione sua pred̄. inde versus eum habend̄ precludatur &c.

The Plaintiff Replyes, That the Arbitrators made no such Arbitrement, Issue thereupon.

ET pred̄ Quer̄ dic' qd̄ Justic. hic a captione Jurat̄ pred. per aliqua p̄allegat. expectare non debent quia dic' qd̄ p̄dict̄ Arbitratores nullum tale fecerunt arbitrium ordinationem neq; judicium de & super p̄missis ꝓut pred. Def. superius allegavit Et hoc petit qd̄ inquiratur per Patriam et pred. def. similiter Ideo prec' est vic. qd̄ venire fac' &c. xij &c. p̄ quos &c. et qui nec &c. ad recogn̄ &c. qui tam &c.

The

The Defendant pleads an Arbitrement in bar, and ſaith that he hath paid the money according to the Arbitrement mentioned in the Condition of the Obligation upon which the Plaintiff brings his Action.

¶ ET predict Thomas Barton p Henr W. Attorñ ſuum veñ & defend vim & injuriam quando &c. Et pet. audit ſcripti pred et ei legitur &c. petit etiam audit indorſamenti ejuſdem ſcripti et ei legitur in hec verba. ¶ *The Condition of this Obligation is ſuch, That if the within bounden* John Barton *Eſquire, his Executors and Aſſigns, well and truly content and pay or cauſe to be paid unto the within named* Thomas Delariver *his Executors and Aſſigns, the ſumme of* 30 *l. of lawful Engliſh money in manner and form following, (that is to ſay) that the ſaid* John Barton *Eſquire his Executors and Aſſigns do pay yearly unto the ſame J. D. his Executors and Aſſigns the ſumme of Forty ſhillings within the Pariſh Church of* Bransbe *untill the ſaid ſumme of* 30 *l. be fully and wholly ſatisfied contented and paid to the ſame* T.D. *according to the tenor, purport and effect of one Award and Agreement made by Sir* Arthur Darcey *Knight,* Roger Cholmley *Knight and Serjeant at the Law, and* Chriſtopher Jenny *the Kings Serjeant at the Law, between the within bounden* J. B. *of th'one part,*

part, *and the above named* J. D. *of the other part, whereof the date is the* 12*th day of* J. *in the* 26. *year of the Raign of our Soveraign Lord King* Henry *the* 8*th*, *That then, &c.* Quibus lectis & auditis idem T. B. dic. qd pred T.D. actionem ſuam pred. verſus eum habere non debet quia dic' qd pred. A.R. & C. pdicto 22. die J. Anno xxvj. ſupradicto apud Civitatem Eborum p quoddam ſcript ſuum Arbitrij quod idem T. B. ſigillis ipſorum A. R. & C. ſignat hic in Cur pfert cujus dat. eſt eiſdem die & Anno Arbitrati fuer ordinaver & adjudicaver inter partes pdictas modo & forma ſequen (videl't) quod pred. T. D. haberet omnia & ſingula talia terras tenementa & hereditamenta que Johannes Barton vel aliqua alia pſona ſive alique alie pſone ad uſum ſuum tunc habuit infra Dominium de Bradsby in pdicto Com Eborum habend. & tenend. pred. T. D. & hered. ſuis imperpetuum ſecundum redditum de antiquo tempore uſitat. Et quod idem Johannes Barton in conſimili modo haberet omnia & ſingula talia terras tenementa & hereditamenta que pred. Thomas D. ſive aliqua alia pſona vel pſone ad uſum ſuum habuer infra Dominium de Whenby in pred' Com Eborum habend' & tenend' eidem Johann Barton & hered' ſuis imperpetuum p viam excambij alternatim & valorem p valore, Et ulteri⁹ Arbitrati fuer qd pred terr & tenta ejuſdem Johannis Barton

ton sic capt̄ in excambium ut supradictum est non esset inhansat̄ neq; raisat̄ sed ire secundum veterem redditum Et ulterius arbitrati fuer̄ quod pred. Thom. Delariver haberet superplusagium terrarum ejusdem Johannis Barton in Brandisby p̄dicta non excambiit sibi & hered̄ suis in feodi-firma reddendo inde annuatim eidem Johanni Barton & hered̄ suis annualem redditum de antiquo tempore usitat̄ Et quod assurancia foret facta de pred. terris & ten̄tis & ceteris p̄missis utriq; parti ꝓut ꝑ eruditum consilium foret devisand. ad equalia custagia & onera ambarum partium predictarum Et ꝑterea pred. A.R. & C. arbitrati fuer̄ quod predictus Johannes B. Heredes & Executores sui solverent vel solvi facerent p̄dicto T. D. Executorib⁹ vel Assign̄ suis triginta libr̄ bone & legalis monete Angl' modo & forma sequen̄ videl't quadraginta solidos quolibet anno extunc deinceps quousq; predicte triginta libre plenarie forent satisfacte contentate & solute, Et quod pred. Johannes Barton ante Festum Pasche tunc ꝓx' sequen̄ acquietaret & inveniret sufficient' plegios obligand. predicto T. Delariver ꝓ vera solutione inde Ac etiam pred. A. R. & R. arbitrat̄ fuer̄ q̄d pred. T. D. extunc imposterum non ꝓcuraret ꝓ seipsum suos servientes vel tenentes aliquas materias versus pred. J.B. suos servientes vel tenentes nec eorum aliquem aliquem nec q̄d pred. Johannes

hannes B. in consimili modo extunc deinceps non ꝓcuraret p seipsum suos servientes sive tenentes aliquas materias versus predict T.D. suos servientes vel tenentes sive eorum aliquem Et ulteri⁹ arbitrati fuer quod omnia debita ꝑdicto T. D. debit ꝑ aliquem tenentium sive firmariorum pred. J.B. forent soluta pred. T. Delariver Executorib⁹ vel Administratorib⁹ suis Ac etiam qd omnia debita ꝑdicto Johanni D. debit ꝑ aliquem tenentium vel firmariorum pred' T. Delariver in consimili modo forent solut & satisfacta pred. J. B. Executorib⁹ vel Administratorib⁹ suis Et etiam arbitrati fuer quod uterque ꝑdictorum Thome & Johannis Barton clare exoneraret alterum suos tenentes & servientes de omnimod. actionib⁹ & indictamentis ꝑ ipsos vel eorum aliquem ꝓcurat alteri p alterum Et insuper quod quedam commissio esset ꝓsecut extra Curiam Cancellarie, ad equalia custagia & onera ambarum partium pred. dirigend. Roberto C. W.D. J.B. & J.W. generosis ad videndum valorem pred. terrarum & tentorum ac ceterorum ꝑmissorum & post visum sic capt pred. Commissionarij ad certificand' eand' in Termino Pasche tunc ꝓx' sequen Et ulteri⁹ arbitrati fuer quod si al qualis questio dubium vel ambiguitas ad aliquod tem⁹ extunc contingerent venire vel oriri inter' partes ꝑdictas vel ꝑ rationem alicujus sentencie articuli vel verbi contenꝫ infra arbitrium

bitrium illud quod tunc omnis & quelibet talis variancia interrogatio dubium vel ambiguitas de tempore in temp⁹ extunc imposterum semper foret exposit̄ declarat̄ ordinat̄ interpretat̄ & adjudicat̄ ꝑ predictos Arbitratores vel eorum diutissime viventem juxta veram intentionem ejusdem Arbitrij Et eadem expositio declaratio ordo interpretatio & judicium sic ꝑ eos vel eorum aliquem sact̄ extunc imposterum remanerent & essent bona & habilia in lege sicuti specificat̄ foret & content̄ infra arbitrium illud prout per idem Arbitrium plenius liquet Et idem Thomas Barton dic' qd̄ pred. Johannes Barton post confectionem scripti predit̄ cannuatim per quindecem annos extunc ꝓx' sequen̄ quolibet Anno in Festo Sancti Michaelis Arch-Angeli solvit prefat̄ T. Delariver quadraginta solidos quos eidem T.D. annuatim solvisse debuit secundum formam & effectum Arbitrij predict̄ (videl't) infra Ecclesiam Parochialem de Brandesby predict̄ in predicto Com̄ Eborum Et hoc &c. unde &c.

The

The Plaintiff in his Replication assigns for breach of the Arbitrement, That the Defendant did not pay 40 s. *at one of the Feasts named in the Award.*

ET predictus T. D. dic' qd precludi non quia ꝓtestando quod pred. J. B. non solvit eidem T. D. aliquam denariorum summam in aliquo uno anno ꝑ predictos quindecem annos ꝓut pred. T. B. superiꝰ allegavit ꝑ placito idem T. Delariver dicꝰ qd pred. J. B. non solvit eidem T. D. quadraginta solidos in Festo Sancti Michaelis Archangeli Anno Regni Dñi Regis nunc primo quos eidem T. D. eodem Anno solvisse debuit secundum formam & effectum Arbitrij pred. ꝓut pred. T. Barton superius allegavit. Et hoc &c.

The Defendant in his Rejoynder saith he paid the 40 s. *at the Feast aforesaid, and takes Issue thereupon.*

ET predict T. B. ut prius dic' qd pred. J. B. solvit ꝑfat T. D. pred. xl. s. in pd Festo Sancti M. Archangeli Anno regni Dñi Regis nunc primo quas ei eodem anno solvisse debuit secundum formam & effectum Arbitrij pred. ꝓut ipse &c. Et de hoc ponit se super Patriam Et ꝑdictꝰ quer similiter Ideo 12. &c.

In Debt upon an Obligation with Condition for performance of an Arbitrement, the Defendant pleads, That he gave bond to the Plaintiff for the Money mentioned in the Arbitrement.

ff ET pred' A. per C. Attorñ ſuum veñ &c. Et dic' quod actio non quia dic' quod ipſe poſt emptionem bonorum & catallorum pred' apud S. in Coñ C. p̄ ſecura ſolutione dictarum 10 l. fec' prefat̄ C. quoddam ſcriptum obligatorium per quod idem A. tenebatur & obligatur prefat̄ C. in predictis 10 l. certo termino in ſcripto content̄ eidem C. ſolvend' Et hoc &c. Unde pet' judicium ſi pred' queř actionem ſuam pred' de vel p̄ p̄d' emptione bonorum & catallorum pred. verſus eum habere debeat &c.

The Plaintiff Replyes, That the Defendant made no ſuch Bond.

ff ET pred' C. dic' qd̄ precludi non quia dic' quod pred' A. non fecit eidem C. p̄ ſecura ſolutione p̄dictarum 10 l. aliquod ſcript̄ obligatorium p̄ut pred' A. ſuperius allegavit Et hoc petit qd̄ inquiratur per Patriam, et pred' A. ſimilit̄ Jō. xij' &c.

The

The Defendant pleads an Arbitrement in bar, and that he hath performed it generally.

ſſ ET pred' Def. dic' qđ actio non quia dic' quod poſt confectionem ſcripti predict & ante pred' 7. diem A. in indorſamento predict' ſuperius ſpecificat' ſcil't vj. die A. Anno Regni Domini Regis nunc xxxiij. ſupradicto Arbitratores predict' accepto ſuper ſe onere Arbitrij ordinationis & Judicij p̄d apud Dertford in p̄d Com̄ Kanc̄ per quoddam ſcriptum ſuum quod idem L. ſigillis predict W. & J. ſignat̄ hic in Cur̄ pfert cujus dat' eſt eiſdem die & Anno arbitrat' fuer̄ ordinaver̄ & adjudicaver̄ inter ipſum W. B. & prefat' L. de & ſuper premiſſis in indorſamento predict ſuperius ſpecificat' in forma ſequen̄ (videl't) qđ predictus H. haberet ſuccideret & aſportaret &c. (ut in Arbitrio &c.) ad quod Def. placitat' performanc' in omnibus.

The Plaintiff in his Replication proteſting that the Defendant hath not performed the Arbitrement, for Pela he ſhews ſpecially wherein the Arbitrement was not performed.

ſſ ET pred' qd dic' qd precludi non quia ꝓteſtando qd pred' L. non ꝓimplevit nec cuſtodivit aliqua in Arbitrio pred' content' & ſpec' ex parte ſua perimplend' & cuſtodiend' ꝓ placito dic' qd pred' L. ſuper cognitionem predictam ſibi in forma pred' factam non abduxit A. L. pred' ad predict' domum manſionis ipſius W. apud H. pred' p̄dict' duo ſufficien carectat' le Stuffe ſecundum formam & effectum Arbitrij pred. ꝓut pred. def. ſuperius allegavit et hoc &c. Unde pet' Judicium & debitum &c.

The Defendant takes Iſſue upon the breach aſſigned by the Plaintiff in the Arbitrement.

ſſ ET pred' L. ut prius dic' qd ipſe ſuper cogñ pred' ſibi in forma pred' factam abduxit A. L. pred. ad pred. domum manſionis ipſius W. apud H. pred. p̄dict duo ſufficien carectat. le Stuffe ſecundum formam & effectum Arbitrij pred. ꝓut &c. Et de hoc poñ &c.

In Treſpaſs *the Defendant pleaded, That there was an Award made between him and the Plaintiff, as well of the Treſpaſs mentioned in the Declaration, as of all other Treſpaſſes; wherein it was awarded, That the Defendant ſhould pay* 10 s. *&c. to the Plaintiff; which he hath performed.*

ſſ ET predictus def. per T.L. Attorñ ſuũ venit et defendit vim et injuriam quando &c. Et quoad Venire vi & armis dicit qd ipſe in nullo eſt inde culpabilis Et de hoc ponit ſe ſuper Patriam et predictus quer̃ ſimiliter Et quoad reſid' tranſgr̃ predict̃ ſuperius fieri ſuppoſit̃ idem def. dicit qd p̃dictus quer̃ actionem ſuam p̃dictam inde verſus eum habere non debet Quia dicit qd' poſt p̃dictum temp⁹ quo ſuppo-nitur tranſgr̃ predict̃ fieri ſcil't tali die et Anno apud B. p̃dicti quer̃ et def. ex eorum unanimo aſſenſu poſuiſſent ſe in Arbitrium ordinatiouem & judicium quorundam T. M. gen̄. et D. B. gen̄. Arbitratorum inter-eos indifferenter electorum ad arbitrand' ordinand' et adjudicand' inter ipſum def. et p̃fat̃ quer̃ tam de p et concernen̄ tranſgr̃ p̃dict̃ in Narratione p̃dicta ſuperius fieri ſuppoſit. quam de et ſuper omnibus aliis tranſgr̃ ſectis querelis debitis Computis Controverſiis & Demandis quibuſcunq; inter eundem defend' & p̃dict. quer̃ ante tunc

habit̄ mot̄ sive ꝓpetrat' Predictiq; Arbitratores accepto super se onere Arbitrij Ordinationis & judicij p̄dict. posteo scil't tali die & Anno apud B. pred' arbitraverunt ordinaverunt & adjudicaverunt inter ipsum defend. & pfat' quer̄ de & super p̄missis in forma sequen videl't qd̄ idem def. solveret p̄fat̄ quer̄ decem solidos legalis monete Anglie plenam satisfactionem tam transg̃r pred̄ in Narratione p̄dicta superius fieri supposit̄ quàm omnium al' transg̃r sect. querel' debitorum Computorum Controversiarum & Demand. quorumcunq; Acetiam q̄d uterq; p̄dictorum defend' & quer̄ firmam pacem cum alterutro de cetero haberent Que quidem Arbitratores post Arbitrium Ordinationem & judicium ill' in forma predicta fact' scil't p̄dicto tali die & Anno supradicto eadem Arbitrium Ordinationem & judicium p̄dict. def. & quer̄ apud B. p̄dict. publice delaraverunt Et idem def. dicit qd̄ ipse tempore declarationis Arbitrij Ordinationis & judicij p̄dictorum eisdem def. et quer̄ p Arbitratores p̄dictos ut p̄fertur fact. instanter solvit p̄fat. quer̄ p̄dictos decem solidos secundum formam & effectum Arbitrij Ordinationis & judicij p̄dictorum Et hoc parat̄ est verificare Unde petit judicium si p̄dictus quer̄ actionem suam p̄dictam inde versus eum habere debeat &c.

The

The Plaintiff Replyes, That the Arbitrators made no such Award.

ff ET predictus quer̄ dicit qd̄ ipse p̄ aliqua p̄ predictum Def. superius placitando allegata ab actione sua predicta habend. precludi non debet quia dicit qd' predicti Arbitratores non fecerunt aliquod tale Arbitrium Ordinationem sive judicium de eis super transgr̄ prtdicta in Narratione predicta superius specificat̄ ,put predictus def. superius placitando allegavit Et hoc petit qd' inquiratur per Patriam & p̄dictus def. similiter Ideo 12. &c.

In Debt upon a Bond conditioned for the performance of an Award, the Drfendant pleads, That the Arbitrators made no such Award.

ff ET predictus Def. per L. G. Attorn̄ suum venit & defendit vim & injur̄ quando &c. Et petit auditum scripti predicti et ei legitur &c. petit etiam auditum Conditionis ejusdem scripti et ei legitur in hec verba; *The Condition of this Obligation is such, That if the above bound* C. S. *shall stand to, abide and perform the Award, Order and Judgment of* L. T. R. M. *and* B. F. *Arbitrators indifferently elected and chosen as well on*

the part and behalf of the above bound A. C. *as on the part and behalf of the above-named* N. B. *to award, order and judge of and upon all such Actions, Suits, Trespasses, Quarrels, Debts, Demands, Controversies and Debates had, moved and risen between the parties aforesaid before the date of the above-written Obligation. And such the Award, Order and Judgment (if any such shall be made by the Arbitrators aforesaid) the said* A. C. *on his part in all things shall well and truly perform, obey and fulfill: So that the said Award shall be made and delivered at or before the Feast of our Lord God next ensuing the date above-written, That then the Obligation above written to be void, or else to remain and be in its full force and vertue.* Quibus lectis & auditis idem Def. dicit qd predictus quer' actionem suam predict. inde versus eum habere non debet Quia dicit qd predicti Arbitratores post confectionem scripti predicti et ante dict. Festum Natalis Dñi in Conditione predicta superius specificat nullum fecerunt Arbitrium Ordinationem sive Judicium de et super premissis in Conditione predicta mentionat Et hoc paratus est verificare Unde petit Judicium si predictus quer actionem suam predictam inde versus eum habere debeat &c.

The

The Plaintiff Replyes, That the Arbitrators did make an Award, which the Defendant hath not performed; And assigns for breach, That the Defendant hath not paid the money at the time appointed, according to the Award.

ET predictus quer̃ dicit qd̃ ipſe per aliqua p predictum defend' ſuperius placitando allegat. ab actione ſua predicta habend. precludi non debet Quia dic' qd̃ Arbitratores predicti poſt confectionem ſcripti p̃dicti et ante predictum Feſtum Natalis Dñi in Conditione predicta ſuperius ſpecificat' ſcil't tali die & Anno onus Arbitrij Ordinationis et Judicij predicti ſuper ſe ſuſcipientes apud W. in Com̃ predicto arbitrati fuerunt ordinaverunt & adjudicaverunt de et ſuper premiſſis in Conditione predicta ſuperius ſpecificat' modo & forma ſequen̄ videl't qd̃ predictus def. ſolveret ſeu ſolvi cauſaret prefato quer̃ triginta ſolidos legalis monete Anglie in vel ſuper primum diem Maij tunc p̄x' ſequen̄ in plenam ſolutionem & ſatisfactionem omnium & omnimodarum pecunie ſummarum eidem quer. p̄ prefat' def. ante tunc debit' Acetiam qd̃ dictus def. ſolveret ſeu ſolvi cauſaret p̄fat' quer̃ decem ſolidos conſimilis monete Anglie in vel ſuper ultimum diem M. ejuſdem Menſis Maij in plenam ſatis-

ſatisfactionem & recompenſationem omnium et omnimodarum tranſgr̃ & injuriarum p̃ pfat̃ def. eidem quer̃ preantea fact̃ ſive perpetrat̃ Et idem quer̃ p̃teſtando qd̃ pred. def. non performavit aliqua in Arbitrio predicto ſpecificat. ex parte ſua performand. p̃ placito idem quer̃ dicit qd̃ predictus def. non ſolvit eidem quer̃ predictos decem ſolidos ſuper predictum ultimum diem Maij p̃x̃ poſt diem Confectionis Arbitrij predicti ſecundum formam & effectum Arbitrij illius Et hoc paratus eſt verificare Unde petit judicium & debitum ſuum predictum unacum dampnis ſuis occaſione detentionis debiti illius ſibi adjudicari &c.

Rejoynder and Iſſue no ſuch Arbitrement.

ff ET predictus def. ut prius dicit qd. Arbitratores predicti non fuerunt aliquod tale Arbitrium Ordinationem & judicium de et ſuper premiſſis quale predictus quer̃ ſuperius replicando allegavit Et de hoc poñ ſe ſuper Patriam Et p̃dictus quer̃ ſimiliť Ideo 12. &c.

The

The Defendant pleads, That the Arbitrators made no Award, but that T. *one of them dyed before the time limited for the Award to be delivered to the parties, and that he earneſtly requeſted the Arbitrators to make the Arbitrement.*

ſſ ET predictus L. T. per R. G. Attorñ ſuum venit & defendit vim & injuriam quando &c. Et petit auditum ſcripti predicti Et ei legitur &c. petit etiam auditum Conditionis ejuſdem ſcripti & ei legitur in hec verba: *The Condition of this Obligation is ſuch, That if the above-bound* V. W. *his Executors and Adminiſtrators, and every of them for his and their part and behalf do and ſhall (in all things) ſtand to, obey, perform, fulfil and keep the Award, Order and Judgment of* J.B. *Gent.* T.B. *Gent. and* T.C. *Gent. Arbitrators indifferently choſen, nominated and appointed as well on the part and behalf of the ſaid* L.T. *of the one party, as of the part of the above named* R.M. *of the other party, to Arbitrate, Judge of, and determine all and all manner of Actions, Suits, Debts, Accounts, Treſpaſſes, Controverſies and Demands whatſoever had, moved ſtirred or depending, or which might have been had or moved between the ſaid parties at any time before the date of theſe preſents: So alwaies that the ſaid Arbitrators do make their Award and Judgment of and concerning*

cerning the premiſſes in writing indented under their hands and ſeals on or before the five and twentieth day of March *next enſuing the date of theſe preſents ready to be delivered to the ſaid parties; That then this preſent Obligation to be void; otherwiſe to remain in full force.* Quibus lectis & auditis idem def. dicit qd predictus quer actionem ſuam predictam inde verſus eum habere non debet Quia dicit qd predicti Arbitratores in Conditione predicta mentionat nullum fecerunt Arbitrium ordinationem vel Judicium inter eundem def. & prefat quer de & ſuper pmiſſis in Conditione predicta ſpecificat ante predictum viceſimum quintum diem Marcij tunc px' ſequen dat ſcripti obligatorij pdicti Quodq; predictus T. C. unus Arbitratorum predict ante 26. diem F. px' ante predictum viceſimum quintum diem Marcij apud K. in predicto Com B. obijt. Et ulterius idem def. dicit qd ipſe continuè poſt confectionem ſcripti predicti uſq, ad et in predictum 26 diem F. apud K. pred vehementer requiſivit eoſdem J.B. T.B. & T.C. ad faciend predict Arbitrium Ordinationem & Judicium de & ſuper premiſſis in Conditione predictam ſuperius ſpecificat Et hoc paratus eſt verificare Unde petit judicium ſi predictus quer actionem ſuam predictam inde verſus eum habere debeat &c.

Repl.

Repl. The Plaintiff proteſting, that the Defendant did not requeſt the Arbitrators to make their Award, for Plea ſaith, That T. was living ſuch a day, and traverſes his death, with Iſſue thereupon.

ET predict' Quer dicit qd ipſe per aliqua per predictum Def. ſuperius placitando allegat ab actione ſua predict̃ habend' precludi non debet Quia ꝓteſtando qd predictus Def. vehementer non requiſivit prefat̃ Arbitratores ad faciend̃ predict̃ Arbitrium Ordinationem & Judicium de & ſuper premiſſis ꝓut pred̃ def. ſuperius placitando allegavit ꝓ pl'ito idem quer̃ dicit qd predictus T. C. predicto 26 die F. Anno 21. ſupradicto fuit ſupſtes & in plena vita videl't apud B. pred̃ in Com̃ predict̃ Abſq; hoc qd idem T.C. obijt ante p̄dictum 25 diem M. Anno 21. ſupradicto ꝓut pred̃ def. ſuperius allegavit Et hoc petit qd inquiratur p Patriam Et predictus def. ſimiliter Ideo 12. &c.

The

In Debt upon a Bond conditioned for performance of an Award, the Defendant proteſting the Arbitrators made no Award, for plea (he ſaith) That it was not delivered or ready to be delivered at the day mentioned in the Condition.

ET predictus def. p R.V. Attorñ ſuum veñ & defend vim & injur̃ quando &c. Et pet. audiť ſcripti predicti Et ei legitur &c. pet etiam audiť Conditionis ejuſd ſcripti et ei legitur in hec verba. *The Condition, &c.* Quibus lectis et audiť idem Def. dicit qd predictus queř actionem ſuam predictam inde verſus eum habere non debet quia ꝓteſtando qd Arbitratores predicti ante pred̃ Feſtum Sancti Michaelis Arch-Angeli in Conditione predicta ſuperius ſpecificat' non fecerunt aliquod Arbitrium Ordinationem decretum aut Judicium inter eundem Def. & p̄fat̃ queř de & ſuper premiſſis in Conditione p̄dicta ſuperius ſpec' ꝓ placito idem Def. dicit qd poſt confectionem ſcripti p̄dicti & ante pred̃ Feſtum Sancti Mich' Archangeli in Conditione p̄d̃ ſpecificat̃ nullum Arbitrium Ordinatio Decretum vel Judicium inter ipſum Def. & p̄fat̃ queř de & ſuper premiſſis in Conditione predicta ſpec' deliberat̃ fuit aut parat̃ fuit deliberari ſub manibus & ſigill' Arbitratorum p̄dictorum eiſdem partibus ſecundum formam & effectum Conditionis illius Et hoc parat̃ eſt verifi-

verificare Unde pet Judicium ſi predictus quer actionem ſuam predictam inde verſus eum habere debeat &c.

The Plaintiff Replies, That the Arbitrators did make an Award ready to be delivered (at the day in the Condition) under their hands and ſeals, and ſets forth the tenour thereof, with the aſſignment of the breach on the Defendants part.

ET predictus quer precludi non quia dicit qd poſt confectionem ſcripti p-dicti & ante predictum Feſtum Sancti M. &c. ſcil't tali die & Anno apud A. pred prefat Arbitratores onus arbitrandi ordinandi decretum faciendi & adjudicandi de & ſuper premiſſis in Conditione predicta ſuperius ſpec' ſuper ſe accipientes p ſcriptum ſuum indentat) cujus ſcripti Arbitrij alteram partem ſigillis ipſorum Arbitratorem ſignat idem def. hic in Cur pfert cujus dat eſt eiſdem die & Anno) arbitrati fuerunt &c. [*Here recite the Award*] put p ſcriptum Arbitrij pred plenius liquet & apparet. Quod quidem Arbitrium &c. poſt confectionem ſcripti obligatorij & ante pred Feſtum &c. ſcil't tali die &c. ſupradicto apud A. pred parat fuit deliberari ſub manibus & ſigillis Arbitratorum pred eiſdem partibus ſecundum formam & effectum Conditionis pred' Et idem quer ulterius dic' qd' pred' Def. non ſolvit eidem quer viginti Marcas ſuper

pred

pred' talem diem &c. quas ei ſuper eundem diem ſolviſſe debuit juxta tenorem Arbitrij predicti Et hoc &c. Unde &c. ſibi adjudicari &c.

The Defendant maintains his Plea, viz. No ſuch Award; *and takes Iſſue thereupon.*

ſſ ET predictus Def. ut prius dicit qd poſt confectionem ſcripti predicti & ante pred Feſtum &c. in Conditionis pred' ſpec' nullum Arbitrium &c. inter ipſum def. & prefat quer de & ſuper premiſſis in Conditionis pred ſuperius ſpec' parat fuit deliberari ſub manibus & ſigillis Arbitratorum pred partibus pred put ꝑdictus quer ſuperius replicando allegavit Et de hoc ponit ſe ſuper Patriam Et pred' quer ſimiliter Ideo prec' eſt Vic' qd Venire fac' hic (tali retorn) 12. &c ꝑ quos &c. Et qui nec &c. ad recogn &c. quia tam &c.

Quæries.

Quæries.

Certain Quæries or doubtfull Caſes collected by the ſame Author out of our Old and New Books, and put under their proper Heads or Titles, together with the Books cited pro *and* contra, *very uſefull and neceſſary for all Students in the Law.*

Acceptance.

A Man makes a Feoffment upon condition of reinfeoffement, whether acceptance of another eſtate than is contained in the Condition, ſhall be a Diſpenſation of the Condition, or not? *Quære.* And ſee *Title Conditions. 9.*

A Biſhop makes a Leaſe for years rendring Rent, after makes a new Leaſe, with confirmation of the Dean and Chapter, and

dies, if by his death the firſt Leaſe be void, ſo that the Succeſſor cannot make it good by acceptance of the Rent, or not. *Quære.* 32 *H.* 8. *Dyer. fo.* 46. *pl.* 9.

Tenant in taile makes a Leaſe for years to commence after his death, rendring rent, and dies, the iſſue Accepts the Rent. Whether this ſhall barre his entry or not? *Quære. Dyer. fo.* 279. *a. pl.* 7. *fo.* 69. *pl.* 30. *fo.* 246. *a pl.* 69. *Cooke* upon *Littleton*, 44. *a. Pl. Com. fo.* 430. & 437. *a.*

Tenant in taile makes a Leaſe for years rendring 20 *s.* Rent, and after releaſes 19 *s.* and dies, and the Iſſue accepts the 12 *d.* whether he may diſtraine for the 19 s. more or not? *Quære* 13 & 14. of the Queen *Dyer. fo.* 304. *pl.* 53.

Accord.

WHether an Accord with ſatisfaction be a good Plea in an Attaint, or not, *Quære* 13 *E.* 4. 1. *Br. Attaint.* 91. 13. *E.* 4. 5. 118. 35 *H.* 6. 30. *Br. Attaint.* 12. 6. *E.* 6. *Dyer. fo.* 75. *pl.* 27. 6. *Rep. fo.* 44. *a.*

Acquitance.

A Man bargaines and ſels a Mannour for 20 *l. ſolvend* at ſuch a Feaſt; and in the

the Indenture there are divers Covenants; for obſervance of all which Covenants and Payments, he binds himſelf in 40 *l.* whether in debt for this, the Defendant may plead payment without an Acquittance, or not? *Quære* 26 *H.* 8. *Dyer. fo.* 6. *pl.* 2. 28 *H.* 8. *Dyer. fo.* 25. *pl.* 160.

Adminiſtrator and Adminiſtration.

AN Executor payes 20 *s.* for the Teſtator, and retaines a horſe of the Teſtators of the ſame value; whether this be an Adminiſtration or not? *Quære* 21 *E.* 4. 21. *Br. Title Adminiſtration* 37.

Whether Probate of a Will, or taking Letters of Adminiſtration without doing of any more, ſhall be ſaid an Adminiſtration or not? *Quære* 26 *H.* 8. 7. *Br. Adminiſtration* 2. 28 *H.* 6. 1. *Br. Adminiſtration* 5, 34 *H.* 6. 14. *Br. Adminiſtration* 7. 37 *H.* 6. 27. *Br. Adminiſtration* 31.

Annuity.

WHether an Annuity may be geanted over, or not? *Quære* 41 *E.* 3. 27. *Br. Annuity* 8. 19 *H.* 6. 42. *Br. Annuity* 19. 21 *E.* 4. 20. *Br. Annuity* 37. 14 *H.* 4. 5. *Br. Deputy. &c.* 4.

Whether a releaſe of Actions reals, be a

barre in an Annuity or not? *Quære* 2 *H.* 4. 13. *Br. Annuity* 43. 11. *H.* 4. 85. *Br. Debt.* 66. See *Dyer. fo.* 24. *pl.* 149. an inheritance in a *nomine pœnæ*. See *Davis Reports, fo.* 6. *a. and Title Releases* 2.

Appeal.

A Man for Felony adjudged to death, and pardoned, is after put to answer to an Appeal of Felony, for a Felony done before, and whether he may or no? *Quære:* For the Appeal was once determined, *Br. Appeal* 10. 6 *H.* 4. 6. *Br. Corone* 11. & 147. *Br. Charter of pardon.* 44.

Whether a Releaſe of all Actions Reall and Perſonall, be a Barre in an Appeal of death, ot not? *Quære Littleton, Sect.* 500. 9. *H.* 4. 2. *Br. Tit. Appeal* 29.

An Appellor dies within the year, whether the Appeal ſhall deſcend to others or not? *Quære.* 11 *H.* 4. 11. *Br. Appeal* 30. 9 *H.* 7. 5. *Br. Appeale* 88. 17 *E.* 4. 1. *Br. Appeale* 104. 38 *H.* 6. 13. *Br. Appeal* 141. 9 *H.* 7. 5. *Br. Appeal* 144. 16 *H.* 7. 15. *Br. Appeal* 156. *Dyer. fo.* 69. *pl.* 31.

A woman who hath Title of an Appeal, *De morte viri*, takes husband, ſhe loſes her Appeal; but if the woman convicts the Defendant, and then takes husband, whether in

in ſuch caſe ſhe may demand execution or not? *Quære*, 1. *M.* 1. *Br. Appeal* 109. 21 *E.* 4. 72. 73, *Br. Appeal* 112. 11 *H.* 4. 48. *Br. Appeal* 148.

Apportionment.

A Man makes a Leaſe for years of Land, and of a ſtock of Sheep, rendring certain Rent, all the Sheep die, whether the Rent ſhall be apportioned or not? *Quære*, 35 *H.* 8. *Dyer. fo.* 56. *pl.* 15. 12 *H.* 8. *fo.* 11. *b. pl.* 5. 5. *Rep. fo.* 17. *a. Spencers Caſe.* 7 *H.* 7. 4. *&* 5. *Br. Appertionmest.* 24. 4. *of the Queen Dyer. fo.* 212. *pl.* 37. 38.

Arbitrement.

WHether Arbitrators may arbitrate Free-hold or not? *Quære* 14 *H.* 4. 18. *&* 19. *Br. Arbitrement* 15. 12. *Aſſ. pl.* 25. *Br. Arbitrement* 53. See my Treatiſe of *Arbitrements*, in the beginning thereof.

A man is bound to ſtand to the Arbitrement of *I. N.* who arbitrates that he ſhall pay 10 *l.* whether the Obligee may have Debt upon the Obligation, and upon the Arbitrement alſo, or not? Quære 33 *H.* 62. *Br. Det.* 23. See my Treatiſe of Arbitrements abovementioned.

Arrearages.

A Man recovers a Mannour in a *Precipe quod reddat*, and doth not ſue Execution in a year or two, and after ſues Execution, whether he ſhall have the Arrerages and Services due after the Judgment or not? Quære 48 *E.* 3. 16. *Br. Arrerages* 5. See the like Caſes immediately following.

Grantee of a Rent Charge in Fee diſtrains for Arrerages, and then grants it over, whether the Arrerages be loſt or not by the Aſſignement? Quære, See my *Rep. pa.* 103, *pl.* 178.

A Man who hath Title of Entry for non-payment of Rent upon a Leaſe doth not enter by the ſpace of a year or two after the forfeiture, what remedy for the Rent incurred after the Title of entry? Quære 6 *H.* 7. 3. *Br. Arrearages* 11.

Aſſets by diſcent, and Inter-maines.

LAnd deſcends to an Heir, and he aliens it, and after re-purchaſes it, whether it ſhall be Aſſets or not? Quære 26 *H.* 8. 1, *Br. Aſſets, &c.* 1. & 27.

Land of 40 *s.* a year deſcends charged with the Rent of 26 *s.* by a year, this is not

not Aſſets of 40 *s. tamen hoc videtur*, where the charge is of an eſtate of Free-hold, but here the Charge is but a Chattel, and the Free-hold not charged. *Ideo* Quære 43 E. 3. 9. *Br. Aſſets* 9.

Whether a Reverſion ſhall be Aſſets in Debt, or a *Formedon*; or a Rent upon a Leaſe for life, ſhall be Aſſets in a *Formedon*, or not? Quære 40 E. 3. 38. *Br. Aſſets* 12. 7 H. 6. 3. & 4. *Br. Aſſets* 17. 16 E. 3. *Br. Aſſets* 23. 38 E. 3. 32. *Br. Aſſets* 30. *Cooke* upon *Littleton*, *fo.* 374. *b.*

An Executor payes a Debt of his proper goods, and retains goods of the Teſtators to the value, whether theſe ſhall be Aſſets or not? Quære, 21 E. 4. 21. 22. *Br. Aſſets* 6. 20 H. 7. 4. & 5. *Br. Aſſets inter maines.* 12. See *Cooke* upon *Littleton*, *fo.* 283. *a.*

Whether a Tenancy eſcheated after the death of the Anceſtor, ſhall be Aſſets to the Heir, for to bar him by a Warranty or not? Quære *Keilway* 104. *pl.* 14. See *Perkins*, fo. 20. *b. Cooke* upon *Littleton*, fo. 117. *a.* and 30 H. 8. *Dyer pl.* 15.

If an Executor releaſe a Debt, or diſcharge one in Execution, whether this ſhall amount to as much as Aſſets received or not? Quære. *Hobarts Rep. pa.* 81.

Attachment of Goods.

WHether an Attachment in Court Baron be forfeited by the non-appearance of the party or not? Quære 28 *H.* 6. 9. *Br. Attachment* 2. 34 *H.* 6. 49. *Br. Attachment* 19.

Attaint.

WHether an Attaint lyes in a Writ of Rediſſeiſm or not? and whether the Rediſſeiſin be more than an Inqueſt of Office? Quære 18 *H.* 8. 1. *Br. Attaint.* 1, 2. *H.* 4. 2. *Br. Attaint.* 22. 40. *Aſſ. pl.* 23. *Br. Attaint* 79. 11. *Rep.* Sir *John Heydons Caſe.*

Whether an Attaint lyes in a Writ of inquiry of waſt or not? Quære, 48 E. 3. 19. *Br. Attaint.* 21. 2 *H.* 4. 2. *Br. Attaint.* 22. 11. *Rep. Sir John Heydons Caſe.*

In an Attaint one of the Petty Jury pleades an Accord, with ſatisfaction made betwixt the Plaintiff and the Defendant, whether an Accord with ſatisfaction be a good Plea in an Attaint, and whether the petty Jury may plead that which is betwixt the Plaintiff and Defendant or not? Quære 13 E. 4. 1. *Br. Attaint.* 91. 13 E. 4. 5. *Br. Attaint.* 118.

Atturnment.

Attornement.

LEssee for life is disseised by the Grantee of the reversion, and after recovers in an Assize; whether this be an Attornment or not, Quære 2. *Rep. Tookers Case* the latter end: *Coke* upon *Littleton, fo.* 319. *a.* 18 *E.* 3. 48. *b.* 6. *Rep.* 69. *b. Moyle Finches Case.*

Bayle and Mainprize.

WHether the Bayle may render the body of the Defendant in the Common Bench after a Writ of Error brought by him? or Whether the Bayle be in this case forfeited or not? Quære, *Hobarts Rep. pa.* 157. *pl.* 142.

Baylie.

A Man distrains as Baylie, and is not Baylie, and after the Lord agrees to it, whether it be good or no? Quære, 26 *H.* 8. 8. *Br. Baylie, &c.* 1. 7 *H.* 4. 30. *Br. Baylie, &c.* 4.

Baron

Baron and Feme.

BAron and Feme obligees, the Baron only brings Debt, whether it will lye or not? Quære. 3 *H.* 6. 36. *Br. Baron and Feme*, 2. 43 *E.* 3. 10. *Br. Baron and Feme*, 14. 39 *E.* 3. 5. *Br. Baron and Feme* 55. 43 *E.* 3. 8. *and* 16. *Br. Baron and Feme* 64.

Baron and Feme bound in an Obligation of an 100 *l.* for a Releaſe made to them of Land *de jure uxoris*, the Baron dies, whether this Obligation ſhall bind the Feme or no? Quære. 44 *E.* 3. 33. *Br. Baron and Feme*, 77.

Whether a man may be bound to pay money to his wife or not? Quære. for I doubt of it. 27. *H.* 8. 27. *Br. Conditions.* 8. *Coke* upon *Littleton*, *fo.* 206. *b.*

Whether Baron and Feme may be Conſpirators or not, Quære. 38 *E.* 3. 3. *Br. Conſpiracy* 14.

In an Avowry againſt a Baron and Feme, whether the Baron by himſelf, or whether the Baron and Feme together may diſclaim or not, Quære. See *Title Diſclaimer.* 1.

Barre

Barre.

IN an Annuity the Defendant ſaid that a Tenth was grantcd to the King by the Clergy, and theſe Arrearages were leavied by the Collector, as the portion of the Plaintiff due to the King, Judgment, &c. whether this ſhall barre the Plaintiff or not. Quære. 21 *H.* 7. 12. and 16. *Br. Bar.* 49. & 50.

Whether he which is barred in Debt againſt an Executor, upon a fully adminiſtred found againſt him, ſhall have a new Writ of Debt upon Aſſets come after or not. Quære. 4 *H.* 6. 4. *Br. Debt* 106. and Executors 85. 19 *H.* 6. 36. 37. *Br. Executors* 70. See the 8. *Rep. fo.* 134. *a. b.*

Tenant for life the Reverſion to an Ideot, an Uncle Heir apparent to the Ideot leavies a Fine, and dies, Tenant for life dies, the Ideot dies; whether the iſſue of the Uncle who leavied the Fine ſhall be barred by it or not. Quære. See my *Rep. pa.* 94. *pl.* 164. & *pa.* 146. *pl.* 216.

Ceſſavit.

LOrd Meſne and Tenant, the Meſne ceſſes in payment of Services by two years, and after purchaſes the Tenancy; whether a *Ceſſavit* lies againſt him or not, Quære, *Keilway Caſus incerti temporis, fo.* 104. *pl.* 15. See 27 *H.* 8. 28. *Br. Ceſſavit*, 1.

Champerty.

COuncell agrees with his Clyent before Action brought, that he ſhall have part for his wages, whether this be *Champerty* or not. Quære, 12 *H.* 4. 26. 13 *H.* 4. 16. *&* 17. *Br. Champerty* 3.

The Statute ſpeakes onely of Plea, and therefore whether *Champerty* lyes upon a Suit in a *Subpæna* or not. Quære. 15 *H.* 7. 2. *Br. Champerty* 6.

Charge.

A Man makes a Leaſe for life, and charges the reverſion which after comes to the Tenant for life by diſcent, whether he ſhall hold it charged or not, Quære, 9 *E.* 4. 18. *Br. Charge.* 16. *&* 29. *& Br. Eſtates.* 25. See *Dyer. fo.* 141. *pl.* 44.

A

A Diſſeiſor grants a Rent Charge, the Diſſeiſee confirmes the Grant, and after enters upon the Diſſeiſor, whether the Charge be avoided or not, Quære. See *Title Confirmation* 2.

Charter of Pardon.

WHether a Pardon of the King of Felony, Homicide, &c. doth pardon Murder or not, Quære, See my *Rep. pa.* 213. *pl.* 250.

Clergie.

WHether a Baſtard may have his Clergie or not, Quære, 11 *H.* 4. 8. Br. *Baſtardy*, 46. & Br. *Clergie* 22.

Whether a man *captus occulis*, ſhall have his Clergie or not, Quære, Br. *Clergie* 21.

Commoner and Common.

WHether a man may borrow anothers Beaſts ? to take Seiſin of Common, ſo that he chaſe them out preſently, or not, Quære, 45 *E.* 3. 25. Br. *Commoner, &c.* 5. 22. *Aſſ. pl.* 84. Br. *Commoner &c.* 40. & Br. *Title ſeiſin*, 5. & 36.

Condition

Conditions.

A Man Covenants that his eldeſt Son ſhall marry the Daughter of another by ſuch a day, and he dies before the day, whether the ſecond Son that now is may perform the condition or not. Quære. 27 *H.* 8. 14. 15. *Br. Conditions* 7.

Whether a releaſe of a right, &c. upon a condition ſubſequent, be good or not. Quære. 21 *H.* 7. 24. *Br. Coud.* 84. 17. *Aſſ. pl.* 2. *Br. Cond.* 103. 31. *Aſſ. pl.* 32. *Br. Cond.* 115. *Coke* upon *Littleton*, *fo.* 274. *b.* 43. *Aſſ. pl.* 12. *Br. Releaſes* 39.

A man is bound to inſeoff a woman by a day, and before the day he himſelf marries the woman, he may make a Leaſe for a moneth to a ſtranger, the remainder to his wife, and this is a good performance of the Condition, by *Fiſher tamen* Quære. 4. *H.* 7. 4. *Br. Feoffments of Lands* 38.

A man makes B. and C. his Executors, *proviſo* that B. ſhall not adminiſter, whether this *proviſo* be good or not. Quære. See *Title Executors* 4.

A man makes a gift in tail upon condition

on that the Donee ſhall not make a Leaſe for three lives, or twenty one years, according to the Statute af 32 *H.* 8. whether this be a good condition or not Quære. 10. *Rep. Coke* upon *Littleton*, *fo.* 223. *a. fo.* 39. *a.* 33 *H.* 8. *Dyer. fo.* 48. 49.

Leſſee for years Covenants and grants to the Leſſor, that if he, his Executors or Aſſignes, alien the term that it ſhould be lawfull to the Leſſor and his Heirs to enter, the Leſſee makes his wife Executrix and dies who takes husband, and the husband aliens, whether the Grant and Covenant made of the part of the Leſſee bee a Condition or not Quære. and whether the Condition be broken by the alienation of the ſecond husband or not. Quære. 28 *H.* 8. *Dyer fo.* 6. *pl.* 1. See *Dyer. fo.* 45. *pl.* 1. *and* 3.

A man makes a Leaſe for years, upon condition that if the Leſſee during his life, aſſigns his term, that it ſhould be lawfull to the Leſſor to re-enter, the Leſſee deviſes it by his Teſtament, whether this be a breach of the Condition or not, Quære. 31 *H.* 8. *Dyer. fo.* 45. *pl.* 3.

Tenant in Taile makes a Feoffement upon condition to make back an Eſtate to him and his wife in taile, the remainder *T. M. Filio Meo, &c.* the remainder *Sibil. filiæ meæ*, the Feoffees make a Feoffment to the firſt

Feoffor

Feoffor and his wife in taile, the remainder to *T. M. Filio meo*, the remainder *Sibill. filiæ meæ*, the Feoffor dies, and *T. M.* enters for Condition broken, 'twas holden that the Condition was broken, becauſe that *Sibill. Filiæ meæ* cannot be intended the Daughter of the firſt Feoffor, but whether the Condition be extinguiſhed, or onely ſuſpended by the acceptance of the Feoffor, this is the queſtion, and of this, Quære 31 *H.* 8. *Dyer. fo.* 45. *pl.* 4. 5. *E.* 6. *Dyer. fo.* 69. *pl.* 36 See 8 *H.* 7. 7. Br. *Conditions* 134. 22. *E.* 4. 17. Br. *Conditions* 167.

Leſſee upon condition that he ſhall not do waſte, he ſuffers waſte, whether this be a breach of the Condition or not? Quære 10. and 11. of the Queen, *Dyer*, fo. 281. *pl.* 21.

Gavelkinde Land is deviſed to the eldeſt Son, upon condition that he ſhall pay 100 *l.* to the Wife of the Deviſor, he fails of payment, whether the younger Son may enter in the moity as by an implied limitation or not? Quære 14 & 15 of the Queen *Dyer* fo. 316. *pl.* 5. See the 3. *Rep.* fol. 21. *a. Boſtons Caſe.*

A Man grants a Rent *de novo* in Fee, upon condition that the Grantee ſhall not alien, whether this be a good condition or not? Quære, *Cooke* upon *Littleton*, fo. 223. *a.* See 2. *Rep. fo.* 70, 76, 78.

Confir-

Confirmation.

BAron and Feme Donees in ſpecial Taile, the Baron leavies a Fine, and dies, he in reverſion confirms to the Wife her Eſtate, to have to her and to her Heirs of her Body by the Husband ingendred, what is wrought by this Confirmation, *quære*, 9 *Rep. Beaumonts Caſe.* See my *Rep. pa.* 146. *pl.* 216.

Copy-hold.

THE King grants a Copy-hold for life Generally, whether this deſtroies the Copy-hold or not, *quære* my *Rep. pa.* 206. *pl.* 246.

Corone, &c.

A Man bails goods to another to keep, and after the owner that bailed them, takes them again felonioufly, whether this be Felony or not, *quære*, 7 *H.* 6. 42. *Br. Corone* 45. 5 *H.* 7. 18. *Br. Corone* 142. 29. *H.* 6. *Br. Corone*, 216. 13 *E.* 4. 9. *Br. Corone* 160.

Whether a Man may Felonioufly Steale Goods in his owne Cuſtody or not, Quære, 21 *H.* 7. 14. *Br. Corone* 58. 12. *Aſſ. pl.* 32. *Br. Corone* 76. 3 *H.* 7. 12. *Br.*

Corone 137. 13 E. 4. 9 *Br. Corone* 160. See *Dyer* fo. 5. *pl.* 2. and See now the Statutes of 21 *H.* 8. *cap.* 7 and 5 of the Queen, *cap.* 10. by which 'tis made Felony for a Servant to Steal goods in his cuſtody to the value of 40 *s.* &c.

A Man delivers an Obligation to his Servant to receive 20 *l.* of the Obligor, and the Servant receives it, and after runs away, &c. whether this ſhall be Felony within the Statutes of 21 *H.* 8 and 5 of the Queen before cited or not, *Quære*, Becauſe that the Money was not delivered to him by his Maſter, as the Statutes ſpeak, 25 *H.* 8. *Dyer* fo. 5. *pl.* 2.

Three Men are appealed in Felony, two as principals, and the third as acceſſary, one of the principals is attainted, and the other not, whether the acceſſary may be arraigned before the Attainder of the other or not, Quære *Keilway Caſus incerti temporis* fo. 170. *pl.* 23.

Corporations.

WHether a Corporation may retain a Servant without Deed or not? and what Acts they may do without Deed, what not? Quære, 14 *H.* 8. 2. 29. *Br. Corporations* 34. 4 *H.* 7. 17. *Br. Corporations* 49. 4 *H.* 7. 6. *Br. Corpor.* 47. 7 *H.* 7. 9. *Br.*

Br. Corpor. 50. 12 *H.* 7. 25. 26. *Br. Corpor.* 51. 12 *E.* 4. 9. 10. *Br. Corpor.* 56. 18 *E.* 4. 8. *Br. Corpor.* 59. 21 *E.* 4. 76. *Br. Corpor.* 66. 18 *E.* 4. 8. *Br. Corpor.* 73. 13 *H.* 8. 12. *Br. Corpor.* 83. *Pl. Com.* 91. 92. 4. *Rep.* 119. 6. *Rep.* 38. 10. *Rep.* 67. 11. *Rep.* 79. *Dyer* fo. 102. *pl.* 83.

The King grants a Mannour *hominibus de I. hæredibus & ſucceſſoribus ſuis*, rendring Rent, whether this doth make them a Corporation or not, Quære: And Quære if it had been without rendring any Rent: See *Tit. Grants of the King* 1.

Covenant.

A Man Covenants for himſelf, not nameing his Executors, whether this ſhall bind his Executors or not, Quære, See *Titile Executors* 2.

A Covenants with *B* to enfeoffe him of the Mannour of *D* before *Eaſter*, diſcharged of all former Incumbrances, but Leaſes of which the antient Rent is reſerved, after and before the Feoffment, he makes new Leaſes rendring the antient Rent, whether this be a breach of the Covenant or not, Quære 3. & 4. *P. & M. Dyer fo.* 139. *pl.* 34.

A Man upon Covenants of Marriage,

covenanteth that immediately after his deceaſe, the Land ſhall inure and remain to his Son, and whether this Covenant doth raiſe a uſe to the Son or not, Quære. See *Title Uſes* 1.

Countermand.

A Feme ſole commands *I.* to make an Obligation in her name, and to deliver it as her Deed, and before the Execution of it ſhe takes Husband, and after 'tis executed, by ſome this ſhall bind her, becauſe ſhe had power *tempore mandati*, Quære, whether it be not countermanded by the Inter-marriage, 14 E. 4. 2. *Br. Coverture, &c.* 50. 27 *H.* 6. 7. *Br. Relation* 1. 3. *Rep.* fo. 35. *b.* 4. *Rep. fo.* 60. *&* 61. *Perkins* 140. 141.

Whether a Diſſeiſin ſhall countermand a deviſe or not, *quære*, 39 *H.* 6. 18. *Br. Deviſe* 15.

A Feme ſole Licenſes a man to hunt in her Warren, and after takes Husband, whether by the Inter-marriage the Licenſe be countermanded or not, Quære, 22 *H.* 6. fo. 52. *Br. Licenſes, &c.* 6. 3 *H.* 8. *Keilway*, fo. 163. *a.* 4. *Rep.* fo. 60. *&* 61.

A Leaſe at will is made to a Feme ſole who takes husband, whether by this the leaſe be determined or not, *Quære*, 3 *H.* 8. *Keilway* fo. 162. *pl.* 4.

Court

Court Baron, County Court, and Hundred.

A Man brings debt upon a Recovery in Court Baron, whether the Defendant may plead *nul tiel Record*, or not, or whether he ought to say, *nul tiel Recovery*, Quære, *Br. Court Baron, &c.* 1. 34 *H.* 6. 42. Br. *Court Baron* 14. 9 *E.* 4. 14. Br. *Court Baron* 16. See my *Reports*, *pa.* 15. *pl.* 35.

Upon a Recovery in debt in a Court Baron, the Baily cannot sell the Goods of the Defendant taken in execution, except by custome, and whether he ought to keep them as a distresse till the plaintiff be satisfied of his Debt, or whether he may deliver them to the Plaintiff in execution or not, Quære, 22. *Ass. pl.* 27. *Br. Court Baron, &c.* 7. 38 *E.* 3. 3. *Br. Court Baron* 5. 4 *H.* 6. 17. *Br. Court Baron* 6. 1 *E.* 4. 10. *Br. Court Baron* 10.

A man brought Debt upon a Recovery in antient Demeasne, which is a Court Baron, whether the Defendant might wage his Law or not, Quære, See *Br. Title wager of Law* 10.

Whether a Hundred may be parcell of a Mannour or not, Quære, 27 *H.* 6. 2. *Br. Parcell &c.* 2. & *Br. scire facias* 7. See *Keilway*, *fo.* 151, *pl.* 51.

Customes.

BY the Custome of *London* a man cannot wage his Law for boarding, but notwithstanding in Debt brought at *Westminster*, the better opinion seems to be, that there he shall have his Law, because that such customes are allowable onely in the places where they do arise, *Tamen* Quære, 1 *E.* 4. 5. *Br. Customes* 43.

The Inhabitants of a Parish have a Chappell of Ease, and a Custome that those within such a Precinct ought to find a Rope for the third Bell, and to repair part of the Mother Church, in consideration of which they have been freed from payment of any Tithes to the Mother Church, whether this be a good Custome or not, Quære, See my *Reports*, *pa.* 91. *pl.* 151.

Damages.

WHether in Detinue for divers several things, the Jury may give Damages in grosse, or whether they ought to give them severall or not, Quære, 1 *E.* 5. 5. *Br. Dam.* 141. 1 *R.* 3. *fo.* 1. 3 *H.* 6. 43. *Br. Detinue of Goods* 4. 48.

A man distraines for a penalty assessed by Custome, and distrainable by Custome, and upon a Replevin brought, Judgement was given for the Avowant, and Damages assessed, and whether Damages ought to have been given or not, Quære, See my Reports, *pa.* 38. *pl.* 64.

Darreine Presentment.

A Man seized of a Manour with an Advowson appendant in right of his wife, presents, and after hath Issue, and the wife dies, the Church becomes void, and he presents and is disturbed, whether he shall have an Assize of Darreine Presentment or not, Quære, *Keilway Casus incerti temporis, fo.* 118. *b. pl.* 61.

Debt.

WHether the Heire of the Heire, or the Executors of the Heire shall be charged in debt upon an Obligation made by the Ancestor or not, *Quære*, *Pl. Com. fo.* 441. *a.*

A man is bound to stand to the Arbitrement of *I. N.* who arbitrates that he shall pay 10 *l.* whether the Obligee shall have Debt upon the Obligation, and upon the Arbitrement also, Quære, 33 *H.* 6. 2. Br. *Debt* 23.

In Debt upon a Leaſe for years, the Defendant ſaid that the Plaintiff was bound to Reparations by Covenant and becauſe that the Tenements were ruinous, he commanded him to amend the Tenements with the Rent, the which he did, Judgment if Action, &c. and whether this be a good Plea or not, Quære, 54 *H.* 6. 17. *Br. Debt* 27. 14 *H.* 4. 27. Br. *Debt* 72. 12 *H.* 8. 1. Br. *Debt* 226.

Whether Debt lyes upon a Fine or an Amerciament in a Leet or not, Quære, 7 *H.* 6. 12. Br. *Debt* 85. 9 E. 4. 40. *Br. Debt* 114. 10 *H.* 6. 7. *Br. Debt* 180. 11 *H.* 7. 13. Br. *Debt* 230.

A man promiſes 20 *l.* in Marriage with his Daughter, whether debt lies for it not, Quære, 22. *Aſſ. pl.* 70. *Br. Debt* 135. 14 E. 4. 6. Br. *Debt* 161. 17 E. 4. 4. *Br. Debt* 162. 15 E. 4. 32. *Br. Debt* 105.

Deeds Inrolled.

WHether a Deed inrolled ſhall be avoided by Dureſſe or not, Quære, 21 E. 3. 43. *Br. Faitz. Inroll* 3. 19 *H.* 6. 6. *Br. Faitz Inroll* 4. 6 E. 4. 5. *Br. Faitz Inroll* 11. 16 *H.* 7. 5. *Br. Fitz Inroll* 17.

Demands

Demands and demandable.

THe Mannour of B. extends into B. and D. and is demanded *per nomen Manerii* in B. whether he ſhall recover onely that which is in B. or not, *Quære*, 9 E. 4. 17. Br. *Demand* 50.

Grantee of a Rent to be paid at the houſe, and if the Rent be behind, and lawfully demanded at the Houſe, then to be lawfull for the Grantee to diſtraine, whether a diſtreſſe upon the Land in ſuch caſe be a ſufficient demand or not, *Quære*, See my *Rep. pa* 147. *pl.* 218.

Denizen and Alien.

AN Engliſh man goes beyond the Sea, and marries a Feme alien, whether this makes her of the Allegiance of the King and her Iſſue inheritable or not, *Quære*, Br. *Denizen and Alien* 21. See my Reports *pa.* 91. *pl.* 130.

Detinue of Goods.

A Man finds Goods, and delivers them over before Action brought, whether this ſhall excuſe him in an Action of Detinue brought againſt him for the Goods or not, *Quære*,

quære, 27 H. 8. 13. *Br. Detinue of Goods* 1. 39 H. 6. 2. *Br. Detinue, &c.* 33. 12 E. 4. 8. *Br. Detinue, &c.* 40.

Whether Detinue for Beaſts taken in Withernam lyes or not, *quære*, 11 H. 4. 10. *Br. Detinue of Goods* 18.

Diſclaimer.

IN an Avowry againſt a Baron and Feme, whether the Baron and Feme may diſclaim or not, *quære*, 35 H. 6. 10. *Br. Diſclaimer* 6. 43 E. 3. 5. *Br. Diſclaimer* 8. 10 E. 4. 2. *Br. Diſclaimer* 27. 4 H. 5. *Br. Diſclaimer* 36. 14 H. 4. 18. *Br. Diſclaimer* 38. 21 H. 7. 20. *Br. Diſclaimer* 44. 14 H. 4. 18. *Br. Diſclaimer* 46. 30. *Aſſ. pl.* 10. *Br. Diſclaimer* 50.

A man avowes, and the Plaintiff acknowledges the Avowry, whether in another Avowry he may diſclaim or not, *quære*, 2 E. 4. 16. *Diſclaimer* 23.

Whether the Demandant may enter upon the Diſclaimer of the Tenant or not, *quære*, 4 E. 4. 38. *Br. Diſclaimer* 24. 5 E. 4. 1. *Br. Diſclaimer* 23.

Lord Meſne and Tenant, the Meſne cannot diſclaim in an Avowry, for he cannot loſe the Land of the Tenant; but whe-

whether they may joyn in Diſclamer or not, *Quære*, 12 E. 4. 16 *Br. Diſclaimer* 30. 9 H. 6. 27. *Br. Diſclaimer* 1. 21 E. 4. 47. *Br. Diſclaimer* 31. 11 E. 4. 13. *Br. Diſclaimer* 28. 13 E. 4. 6. *Br. Diſclaimer* 42.

Diſcontinuance.

GRrandfather, Father, and Son, the Grandfather Tenant in Taile makes a Leaſe to another for his life, and dies, the Father grants the reverſion in Fee, the Tenant for life Attournes, and dies, the Grantee enters, and after the Father dies, whether this be a diſcontinuance to the Son or not, *Quære*, *Keilway*, fo. 120. *pl.* 68. *Cooke* upon *Littleton*, fo. 333. See *Dyer* fo. 98. *pl.* 55. and *Littleton*, *Sect.* 637, 638.

Tenant in Taile makes a Leaſe *pur auter vie*, the remainder to the Donee in Fee, whether this be a Diſcontinuance in Fee or not, *Quære* 28 H. 8. *Dyer* fo. 8. *pl.* 15 & fo. 9. *pl.* 121.

Diſpenſation.

A Man makes a Feoffement upon condition of re-infeoffement, whether acceptance of another Eſtate than is contained in the Condition, ſhall be a Diſpenſation of the breach of the Condition or not, Quære, See *Title Conditions*.

Diſſeiſor

Disseisor and Disseisin.

A Man enters upon the Possession of the King, whether this shall be a disseisin to the Tenant of the Freehold or no, *Quære*, 31 *Ass. pl.* 1. *Br. Disseisor & Disseisin* 55. 2 *H.* 4. 7. *Br. Disseisor & Disseisin* 4.

A Disseisee leavies a Fine to a stranger, whether this gives the right to the Disseisor or not, Quære, See *Title Fines of Lands* 2.

Distresse.

WHether a man upon a return irreplegiable, may worke the Distresse or not, Quære, 10 & 11 of the Queen *Dyer* fo. 280. *pl.* 14.

Grantee of a Rent Charge in Fee, distrains for Arrearages, and then grants it over, whether the Arrearages are lost or not, Quære, See *Title Arrearages.*

Distribution.

WHether the Ordinary, after Debts and Legacies paid, may inforce a Distribution of the residue of the Estate or not, Quære, See my *Rep. pa.* 65. *pl.* 162 & *pa.* 93. *pl.* 158, and see *Hobards Reports.*

Dower.

Dower.

A Man makes a Leaſe for yeares rendring Rent, and after takes wife and dies, whether ſhe ſhall be indowed of the Rent as well as of the reverſion, or not, Quære, 1 *E.* 6. Br. *Dower* 89, *Perkins fo.* 69. *pl.* 348. and *Coke* upon *Littleton*, *fo.* 32. *a.*

Whether a Writ of Dower lies againſt the Committe of a Ward of the King and whether Aſſignement of Dower be good by him or not, Quære, *Keilway*, *fo.* 133. *pl.* 112.

Dureſſe and Manaſſe.

WHether a Deed inrolled ſhall be avoided by Dureſſe or not, Quære, See *Title deeds inrolled.*

A man makes a Writting by Dureſſe or Manaſſe, and after he being at large, a Defeaſance is made by Deed indented betwixt the Obligor and Obligee, whether this ſhall eſtoppe the Obligor to ſay that it was made by Dureſſe, &c. or not, Quære, See *Title Eſtoppell.*

Embaſſa-

Embaſement of Monies.

WHere Monies ſhall be paid in ſilver imbaſed, and who ſhall beare the loſſe of it, and who not, Quære, And ſee Title Monies, and Embaſement of them, *per tot.*

Emblements.

BAron and Feme Joyntenants, the Baron ſowes the Land with Corn and dies, whether the Feme or the Executors of the husband ſhall have the Corn, Quære, 8. *Aſſ. pl.* 21. *Br. Emblements* 15. 8 *E.* 3. 54. *Dyer. fo.* 316. *pl.* 2. *Coke* upon *Littleton, fo.* 55. *b.*

Entry lawfull.

AN Infant aſſignes Dower to his mother more than the third part, whether he may enter into the ſurpluſage at his full age or not, or whether he is put to his Writ of Admeaſurement of Dower or not, Quære, 21 *H.* 7. 29. *Br. Entre congeable,* 44. *and Admeaſurement, &c.* 4.

A Man grants a Seigniory for life, the Tenancy eſcheates, a ſtranger enters and dies

dies ſeized, Tenant for life dies, whether the entry of the Lord be taken away, or not, *Quære*, *Keilway*, *Caſus incerti temporis fo.* 114. *pl.* 50.

Tenant for life, the remainder for life, the remainder in fee, Tenant for life makes a Feoffement in Fee, whether he in the remainder for life may enter for the forfeiture or not, *Quære*, See Title forfeiture of Lands.

Enfranchiſement.

A Neiſe marries a Freeman, whether by this ſhe be infranchiſed for ever, or for life onely, *Quære*, And if the Lord marries his Nieſe, whether this be an Infranchiſement for ever or not, Quære, *Coke* upon *Littleton*, *fo.* 123. *a.* & *fo.* 136. *b.* & 137. *b.* *F.N.B.* 78. *b.* 30. E. 1. *Title Villein* 46. 33. E. 3. *ibid.* 21. *Doct.* & *Stud. fo.* 140. *a.* 18 E. 2. *ibi.* 30. 46 E. 3. 6. 4 E. 4. 25. 1 H. 4. 6. 13 E. 1. *Villen.* 36. 18. *Aſſ.* 10. *Mirror* 10. 2. *Sect.* 18.

Error.

A Man recovers by Judgement erronious, and dies without Heire, what remedy, Quære, 9 *H.* 6. 46. Br. *Error.* 9.

Errour brought in the Kings Bench upon

a

a Judgment given in an Assize, one of the Plaintiffs in the Writ of Error, dies pending the Writ, and notwithstanding Judgment was reversed, upon which the Recoverers in the first Action brought Error in the *Kings Bench*, and whether this Error lyes upon a Judgement given in the same Court or not, *Quære*, 2 *R.* 3. 1. *a. and* 20 *b.* 7 *H.* 6. 28. *Dyer* fo. 196. *pl.* 39. *Br. Error* 68. 15 *H.* 4. 7. *Br. Error* 81. 4 *E.* 4. 41. *Br. Error* 158. *Dyer* fo. 159. *pl.* 35.

Whether a Writ of Error lyes in an *Ejectione firmæ*, before Judgment given upon the Writ of enquiry, or not, *Quære*, See my *Rep. pa.* 88. *pl.* 142.

Escape.

IF a Man who is in Execution be let at large by Commandment of the King, Treasurer, or Chancellour, or by License of the Chief Justice, whether this be an Escape or not, Quære, 4 & 5 *P. & M. Dyer* fo. 162. *pl.* 50. 10 of the Queen *Dyer* fo. 275. *pl.* 46. 12 & 13 of the Queen *Dyer* fo. 279. *pl.* 24. *Keilway*, fo. 214. *a.* and many other Books, See *Br. Escape.*

Eſcheat.

A Tenant is diſſeiſed, and dies without Heir, whether the Lord may have a Writ of Eſcheate or not, becauſe that the Tenant died not ſeized, Quære. Or whether he may enter or not, Quære, 2 *H.* 4. 8. Br. *Eſcheate*, 4. 7 *H.* 4. 17. Br. *Eſcheate* 5. 4 *H.* 6. 29. Br. *Eſcheate* 10. 37 *H.* 6. 1. Br. *Eſcheate* 11. 6 *H.* 7. 9. Br. *Eſcheate* 16, & 22. 32 *H.* 6. 27. Br. *Eſcheate* 26. F. N. B. 144. *C. Keilway*, fo. 114. *a.* See the 3. *Rep.* fo. 2 & 3.

Eſtates.

A Man recovers a Rent by a Writ of Entry againſt Tenant in Taile of a Rent, which had not being before the Grant made in Taile, whether the Recoveror hath a Fee ſimple or not, Quære, 15 *E.* 4. 6 & 8. See 37 *H.* 6. 36. & *Com.* 557. *a.* See *Title Rents* 2.

Eſtoppell.

A Man makes a Writing by Dureſſe or a Manaſſe, and after he being at large, a Defeaſance is made by Deed, indented betwixt the Obligor and the Obligee, whether this ſhall eſtoppe the Obligor to ſay that it was made by Dureſſe, &c.

or not, Quære 35 *H.6.* 18. *Br. Defeasance* 17 *and Estoppell* 21; And the Question is no other, but whether the recital of the Obligation by the Deed indented of defeasance, shall be an Estoppel or not, and for this, See *9 H. 6.* 8. *9. Br. Estoppel* 5. 35 *H. 6.* 33. *Br. Estoppel* 23. 46 E. 3. 12 & 13, *Br. Estoppel* 43. 49 E. 3. 14. 15. *Br. Estoppel* 49. 18. *Ass. pl.* 3. *Br. Estoppel* 127. *9 H.* 7. 2. 21 E. 4. 52. 53. *Br. Estoppel* 173, See *Cooke* upon *Littleton*, fo. 352. *b.*

Executors.

WHether Executors shall have the Glass of Windows or not, Quære, 21 *H.*7. 26. *Br. Chattels, &c.* 7.

A Man Covenants for him, not nameing his Executors, whether this shall bind his Executors or not, Quære 32 *H. 6.* 32. *Br. Covenant* 28. 10 *H.* 7. 18. *Br. Covenant* 50, See *Dyer* fo. 14 *pl.* 69. fo. 114. *pl.* 60. & fo. 322 *pl.* 25, See *Cooke* upon *Littleton* fo. 209. *a.*

Whether he which is barred in Debt against an Executor upon a fully administred found against him, shall have a new Writ of Debt upon Assets come after or not, Quære 4 *H. 6.* 3. *Br. Debt*, 106 & *Executors* 85. 19 *H. 6.* 36. 37. *Br. Executors* 70. 33 *H. 6.* 23 & 24. *Br. Executors* 18. 34 *H. 6.* 22.

6. 22 & 24. Br. *Executors* 22. See the 8. *Rep.* fo. 134. *a. b.*

A Man makes *B* and *C* his Executors, proviſo that *B* ſhall not Adminiſter, whether this proviſo be good or not, Quære, 19 *H.* 8. *Br. Executor* 3. 3 *H.* 6. 679 *Br. Executor* 9. *Dyer* fo. 3. *pl.* 7. 32 *H.* 8. *Br. Executor* 155.

The goods of the Teſtator are taken out of the poſſeſſion of the Executors, whether they ought to joyn or ſever in Action, Quære 42 *E.* 3. 26. *Br. Executors* 31. 2 *H.* 7. 15. 6 *H.* 7. 6. *Br. Executors* 170. 24 *E.* 3. 35. *Br. Executors* 84.

An Executor grants *omnia bona & catalla ſua*, whether this paſſes the Goods of the Teſtator or not, Quære, See *Title Grants* 1.

Whether Executors ſhall be charged as Executors in Detinue brought againſt them upon a Bailment made to their Teſtator or not, Quære, *Keilway*, fo. 118. *pl.* 62. 3 *H.* 6. 35. *Br. Executors* 10. 41 *E.* 3. 30. 31. *Br. Executors* 28. 39 *E.* 3. 5. *Br. Executors* 92, See the 9. *Rep.* fo. 94.

Adminiſtration is committed to an Executor *de ſon tort*, whether he ſhall be charged Executor, or as Adminiſtrator, Quære,

Keilway fo. 127. *pl.* 91. 9 E. 4. 33. 47. Br. *Executors* 90.

Whether Debt lyes againſt an Executor of an Adminiſtrator, or not, *quære*, 32 *H.* 8. *Dyer* fo. 47. *pl.* 12. 34 *H.* 6. 14. Br. *Adminiſtration* 7. 24 E. 3. 54. Br. *Executors* 83. See 1 & 2, *P. & M. Dyer* fo. 112. *pl.* 51 & 4 & 5. *P. & M. Dyer* fo. 160. *pl.* 42. 1 & 2 of the Queen *Dyer* fo. 174. *pl.* 21.

Whether the Executors of the Heir ſhall be charged in Debt upon an Obligation made by the Anceſtor or not, *quære*. See Title Heir 1.

Whether the Executor of a Phillizer ſhall have the profits of the Writs which are to be ſubſcribed with his Name, or his Succeſſor, *quære*, See my Reports *pa.* 90. *pl.* 147.

Extinguiſhment.

WHether unity of poſſeſſion ſhall extinguiſh a way or paſſage or not, Quære, 3 *H.* 6. 31. Br. *Chymin.* 13. 11 *H.* 4. 5. Br. *Extinguiſhment &c.* 11. 21 E. 3. 2. Br. *Extinguiſhment* 15. See 11 *H.* 7. 25. Br. *Extinguiſhment* 60. *Hobarts Reports, pa.* 171. *pl.* 170. *Dyer*, fo. 295. *pl.* 19.

A Man Obligor marries with the Obligee, and after they are divorced, whether the Obligation be revived or not, *Quære*, 26 *H.* 8. 7. *Br. Coverture, &c.* 82. and *Extinguiſhment* 1. *Dyer*, fo. 13. *a.* 11 *H.* 7. 4. *b. Br. Deraignement & Divorce* 1 & 18. *Hobarts Reports*, *pa.* 14. *pl.* 19. 8. *Rep.* fo. 136. *a. Coke* upon *Littleton*, fo. 264. 6. *Dyer*, fo. 140. *a. Pl. Com.* fo. 184. *Keilway*, fo. 122. *b.* 21 *H.* 7. 23. See *Br. Aſſets* by Diſcent 1.

Land of B. out of which Rent is iſſuing, is given to another by Act of Parliament, whether the Rent be by this extinguiſhed or not, *Quære*, 21 *H.* 7. 3. *Br. Parliament*, *&c.* 28.

A Feme ſole makes a Leaſe for years, the Leſſee commits Waſte, and after the Leſſor and the Leſſee intermarry, and after are divorced, whether the action of Waſte be revived again or not, Quære, *Keilway*, fo. 122. *pl.* 75. See *ſupra*, *pl.* 2.

Where a Condition ſhall be extinguiſhed, and where only ſuſpended: See *Title Conditions* 9.

Feoffements of Lands.

A Feoffment made by one Joynt-tenant to his Compagnion, ſhall inure by way of confirmation by *Newton*, *Quære*, 22 *H.* 6. 42. 43. Br. *Confirmation* 11, See Br. *Feoffements*, *&c. ult.*

A Man makes a Feoffement of the Mannour of *D* in *D cum pertinentiis*, whether the Mannour of *D* extending into *D* and *S*, or nothing but that which is in *D* onely, or whether all the Mannour ſhall paſs or not, Quære, 7 *H.* 4. 27. Br. *Feoffements of Lands*, 55. 9 *E.* 4 *&* 17, Br. *Feoffements*, *&c.* 59.

Whether a man *ſurdus & mutus* may make a Feoffement or not, Quære, 34 *&* 35 *H.* 8. *Dyer* fo. 55. *pl.* 12. *Cooke* upon *Littleton*, fo. 42. *b. Perkins Title Grants pl.* 25. 2 *H.* 4. 8. Br. *Feoffments &c.* 7.

Fines leavied of Lands.

WHether by a Grant of Conuſance of Pleas and of executions thereupon, a man may levie Fines or not, *Quære*, 44 *E.* 3. 38. Br. *Fines*, *&c.* 22.

A Diſſeiſee levies a Fine to a ſtranger, whe-

whether this gives the right to the Diſſeiſor or not, *Quære*, 2 *Rep.* fo. 56. *a.* 3. *Rep.* fo. 90. *a. b.* 6. *Rep.* fo. 70. *a.* See my Reports, *pa.* 105. *pl.* 180.

Tenant for life, the Reverſion to an Ideot, an Uncle Heir apparent to the Ideot, leavies a Fine and dies, Tenant for life dies, the Ideot dies, whether the Iſſue of the Uncle who leavied the Fine, ſhall be barred by it, or not, *Quære*, See my *Reports*, *pa.* 94. *pl.* 164 *&* *pa.* 146. *pl.* 216.

Forfeiture of Lands, and Goods, and Offices.

WHether an Attachment in a Court Baron be forfeited by Non-appearance of the party or not, Quære, 28 *H.* 6. 9. Br. *Attachment, &c.* 2. 34 *H.* 6. 49. Br. *Attachment, &c.* 19.

Whether a Gardein of a Priſon ſhall forfeit his Office by an Eſcape in the Night or not, Quære, 5 *E.* 4. 26. Br. *Forfeiture, &c.* 54.

Tenant for life, the remainder for life the remainder in Fee, Tenant for life makes a Feoffment in Fee, whether he in the remainder for life may enter for the forfeiture or not, Quære, *Cooke* upon *Littleton*, fo. 252. *a.* *Dyer* fo. 339. *pl.* 44. 29. *Aſſ. pl.* 64. 40 *&*

50. *Ass.* See *Littleton, sect.* 416, & 1 *Rep.* fo. 76. *a. b.*

Gardian in Socage.

TEnant in Socage deviſes by his will, the Cuſtodie of his Heir apparent within age to B. whether this ſhall bar the Gardian in Socage or not, Quære, *Keilway*, fo. 186. *pl.* 1.

Grants of Common perſons.

AN Executor grants *omnia bona & catalla ſua*, whether this ſhall paſs the Goods of the Teſtator or not, Quære, 10 E. 4. 1. *Br. Grants* 96. 46 E. 3. 18. *Br. Grants* 21. 24 E. 3. 35. *Br. Executors* 84: See my Reports, *pa.* 205.

An Abbot hath an Advowſon appropriate, which hath a Vicarage endowed, and grants the Church and Advowſon, whether by this the Advowſon of the Vicarage, ſhall paſs or not, Quære, 16 E. 3. *Br. Judgements* 138: See 40 E. 3. 28. Br. *Juriſdiction* 5, and *Juris utrum* 2.

A Man grants *omnia bona & catalla ſua*, whe-

whether by this an Obligation ſhall paſſe or not, Quære, 25 *H.* 8. *Dyer, fo.* 5. *pl.* 3. 36. 37 *H.* 8. *fo.* 59. *pl.* 15. 21 *H.* 6. fo. 30. 8. *Rep.* fo. 33. *a. b.* 4 E. 6. Br. *Grants* 51. 39 *H.* 6. 35. Br. *Grants* 62. 4 *H.* 7. 10. Br. *Grants* 84.

Grants of the King.

THe King grants a Mannour *hominibus de J. heredibus & ſucceſſoribus ſuis*, rendring Rent, *Quære*, whether this ſhall make them a Corporation or not; and *Quære*, if it were without rendring Rent, 21 E. 4. 55. 56. Br. *Corporations. &c.* 65. 2 *H.* 7. 13. Br. *Pattents* 44. 7 E. 4. 30. Br. *Pattents* 62. 7 E. 4. 14. Br. *Pattents* 85. *Dyer.* fo. 100. *pl.* 70.

The King Grants an Eſcheate *cum acciderit*, whether the Grant be good or not, Quære. 1. *&* 2. *P. & M. Dyer*, fo. 108. *pl.* 30.

The King grants a Copy-hold for life generally, whether this deſtroyes the Copy-hold, or not, Quære, See my Reports, *pa.* 226. *pl.* 246.

Heire.

WHether the Heir of the Heir, or the Executors of the Heir, ſhall be charged in Debt upon an Obligation made by the Anceſtor or not, *Quære*, *Pl. Com. fo.* 441. *a.* 22. of the Queen *Dyer. fo.* 368. *pl.* 46.

Incertainty.

A Man diſtrains by two Horſes, the one worth 10 *l.* the other 40 *s.* and avowes the one for one Rent day, the other for another, not making mention which for the one, nor which for the other, and the one is found for him, the other againſt him, of which horſe he ſhall have a return, Quære, 2 *H.* 6. *fo.* 3. *a.* See 2 *H.* 6. 17. *Br. Retourn de avers* 1.

Inſtance and Inſtant.

A Copie-holder for life Heriotable, the Lord grants the Seigniory for 99. years if the Tenant ſhould live ſo long, the Tenant dies, whether the Grantee for 99 years ſhall have the Heriot by force of this inſtant any

any title, or not, Quære, See my Reports, *pa.* 23. *pl.* 52.

Joynder in Action.

The Goods of the Teſtator are taken out of the poſſeſſion of the Executors, whether they ought to joyne or ſever in action, Quære, 42 *E.* 3. 26. *Br. Executors* 31. 2 *H.* 7. 15. 6 *H.* 7. 6. *Br. Executors* 170.

A promiſe is made to a Baron of a Feme Executrix, in that Right as Executrix, whether they may joyn in action or not, Quære, See my Reports, *pa.* 72. *pl.* 110.

Joyntenants, &c.

IT is enacted by Parliament, That all Eſtates made to *I. N.* ſhall be void; an Eſtate is made to *I. N.* and his wife, whether this ſhall be void the wife ſurviving or not, *Quære*, 5 *H.* 7. 30. *Br. Joyntenants, &c.* 67.

Two Joyntenants for life, the one makes a Leaſe for years, to commence after his death, and dies, whether this ſhall binde the Survivor or not, *Quære*, *Pl. Com. fo.* 263. *b. Coke* upon *Littleton, fo.* 184. *b.* 185. *a Littleton, ſect.* 289. *Cooke* upon *Littleton, fo.* 186. *a, b.* See *Dyer, fo.* 69. *pl.* 30. *and* 279. *pl.* 7. *and* 187. *pl.* 5.

Two

Two Joyntenants, the one grants a Rent to his compagnion in Fee, whether the Grant be good or not, Quære, *Keilway*, *fo.* 728. *pl.* 95.

A man poſſeſſed of a tearme for years, deviſed by his Teſtament, the terme to his two Sons equally, whether they be Joyntenants, or Tenants in Common, Quære, 28 *H.* 8. *Dyer*, *fo.* 25. *pl.* 158. See *Ratcliffs Caſe*, 3. *Rep. fo.* 39. *b.*

An Obligation of 200 *l.* is made to two *ſolvend. eis ſc.* the one hundred pounds to one of them, and the other hundred pounds to the other, the one of the Obligees dies, and his Executors ſue for the one hundred pounds, whether the intire 200 *l.* accrues to the Survivor or not, *Quære*, 18. of the Queen *Dyer*, *fo.* 347. *pl.* 20. See *fo.* 160. *b.* *pl.* 43.

Juſtification.

GRantee of a Rent Charge in Fee, diſtraines for Arrearages, and then grants it over, whether he ought to avow or juſtifie, Quære, my Reports, *pa.* 103. *pl.* 178.

King

King and Queen.

THe King grants Land to the Queen in Fee, whether this be a good Grant or not, Quære, the Book of Entries 97. 98. *Pl. Com. fo.* 206. *Stapletons Caſe.* See the Epiſtle to the 6 *Rep.* 3 *H.* 7. *cap.* 14. *ob.* 49 *E.* 40. *Br. Title Novability.* See 34 *H.* 6. 34. *Pl. Com. fo.* 245, 247, 234. 35, *H.* 6. 38. *Anſ.* 17 *E.* 3. *b.* 7 *H.* 7. 7. 18 *E.* 3. 13. 4. *Rep. Clarks Caſe* 4. *Rep. Vernons Caſe*, 8. of the Queen *Dyer, fo.* 248. 4. *Rep.* 3. 6. (againſt *Br.* 6 *E.* 6. *Dower* 69.) 23 *E.* 3. 22. 1 *E.* 3. 4. 9 *E.* 3. 33.

The Queen an Infant makes a Feoffement in Fee, whether this be good or not, *Quære, Cooke* upon *Littleton, fo.* 3. *a.* 133. *a. b.* 131. *a.* 127. *a. and* 31. *b.* 26. *Aſſ. pl.* 54. 3 *H.* 6. 55. 11 *H.* 6. 32. *Pl. Com. fo.* 213. *&* 221. *F. N. B. fo.* 43. 15 *E.* 4. 16. 38 *E.* 3. 2. *Dyer, fo.* 203. 27. *Aſſ. pl.* 4. 5. *Rep. fo.* 27. 18 *E.* 4. 10. 21 *E.* 4. 13. 8. *Rep.* 173. 6. *Rep.* 74. 27 *H.* 8. 1. 17 *E.* 3. 17. *Stamfords* Pleas of the Crown, 61. 3 *H.* 7. 14. 21 *H.* 7. 8. 5. *Rep. fo.* 56. *a.* 9 *E.* 3. 33. 3 *H.* 7. 14. *b.*

Lacheſſe,

Lacheſſe.

IF the King hath a preſentation in any other Right then in the Right of the Crown, whether Laps ſhall incurre againſt him, as againſt any other perſon or not, Quære, *Regiſter, fo.* 31. *a.* Br. *preſentments al Eſgliſes* 156.

Leaſes.

A Man covenants that another ſhall have his Land for twenty years, whether this amounts to a Leaſe or not, *Quære*, 21 *H.*7. 37. Br. *Covenant*, 26. *and Leaſe* 21. 37 *H.* 8. *&* 1. *E.* 6. Br. *Leaſe* 68. See *Dyer, fo.* 372. *b. pl.* 11. *& fo.* 150. *pl.* 83. See *Hobarts Reports, pa.* 48. *b.* 49. *a.*

A man makes a Leaſe for years rendring Rent to himſelf during the Term, and dies, whether his Heire ſhall have debt for the Rent arere after or not, Quære, See Title Reſervation 1.

A Biſhop makes a Leaſe to two for years rendring Rent, after makes a new Leaſe with confirmation of the Dean and Chapter to one of them, and dies, whether by his death

death the firſt Leaſe be wholly void or not, Quære, 32 *H.* 8. *Dyer, fo.* 46. *pl.* 9.

A man makes a Leaſe for years, upon condition that if the Leſſee aliens the term, that then it ſhould be lawfull to the Leſſor, &c. to enter, the Leſſee aliens the term, the Leſſor before entry makes a Leaſe for years, whether the Leaſe be good or not, Quære, 28 *H.* 8. *Dyer, fo.* 6. *pl.* 1. *& fo.* 7. *pl.* 6. *Pl. Com. fo.* 101. 132. 133. *&c.*

Tenant in taile makes a Leaſe for years to commence after his death, rendring Rent, and dies the Iſſue accepts the Rent, whether this ſhall barre his entry or not, Quære, *Dyer, fo.* 279. *pl.* 7. *fo.* 69. *pl.* 130. *& fo.* 246. *a. pl.* 69. *Cooke* upon *Littleton, fo.* 44. *a. Pl. Com. fo.* 430. See *Dyer, fo.* 357. *pl.* 43. the like caſe.

Licenſe.

A Feme ſole Licenſes a man to hunt in her Warren, and after takes husband, whether by the intermarriage, the Licenſe be determined or not, *Quære*, 22 *H.* 6. 52. *Br. Licenſes* 6.

A man licenſes another to hunt and kill a Buck in his Park, whether by force of this Licenſe he may take it away with him or not, Quære 18 *E.* 4. 14. *Br. Licenſes*, 12, *&c.*

and

and 6. And Quere, whether he may kill it by his Servant or not. See 23 H. 8. Br. Patents 76. & 12 H. 7. 25. Br. Property 41. for the first Case; and see 21 H.7.13. Br. Trespass, 207. 13 H.7.10. Br. Trespasse 431.

Livery and Seisin.

A Man makes a Feoffment and a Letter of Attorney to make Livery absolutely, and he makes Livery upon condition; whether this Livery be void or not? Quere, 12 Ass. pl.24. Br. Disseisor, &c. 33. and Feoffments 25. Coke upon Littleton, fol. 250. a. b. Perkins, fo. 39. pl. 192. Coke upon Littleton. fol. 52. a. b. 26 Ass. pl.39. Br. Feoffments 27.

A man enfeoffes two, and makes a Letter of Attorney to one of them to make Livery to the other in the name of both, and he doth it; whether he that makes the Livery doth take any thing or not, Quære, 3 H. 6. 43. Br. Attorney 5. Perkins, fo. 41. a.

A man seized of a House and Close makes a Lease for years of the House; and after makes a Feoffment of the House and Close, and delivers Seisin in the House (the Wife and Infants of the Termor being in the House) in the name of all; agreed, that the House shall not pass; but whether the Close being within the View, shall pass or not, Quære, 28 H.8. Dyer, fo.18. pl.107,108.

A

A Letter of Attorney is made to three to make Livery, *conjunctim & divisim*, two make Livery, the third being present, not doing or saying any thing, whether this be a good Livery or not, Quære, 38 *H.8. Dyer, fo. 62. pl.* 34.

Lessee for years makes a Feoffment, and a Letter of Attorney to make Livery, and after the Attorney delivers Seisin, the Lessor being present upon the Land, not contradicting; whether the Land passes by this Feoffment or not, Quære, *Dyer fo.* 362. *pl.* 20. & 354. *pl.* 35.

Maintenance.

A Man buyes a Title thus; That if he can recover it, he shall pay two hundred pounds, otherwise nothing; whether this be maintenance punishable at the Common-Law or not, Quære, *Hobarts* Reports, *pa.* 157. *pl.* 141.

Monies, and embasement of them.

A Man bound to pay money by specialty, tenders the money at the day of payment, which is refused, and after the money is debased; who shall bear the losse of it? Quære, 7 *E.6. Dyer, fo.* 83. *pl.* 76. See before in *Dyer, pl.* 69, 70, 73, 74, 75. and *Davis* Reports, *fo.* 27, 28.

A man bequeatheth by his Will Money to another, after baſe money is eſtabliſhed; whether the Legacy may be paid in this baſe money or not? Quære *Davis* Reports, fo.27. *b.*

A man hath a Thouſand pounds pure Silver in marriage with his Wife, who after are divorced *cauſa præ-contractus.* Or a man recovers by erronious Judgment an hundred pounds in debt, and hath execution in pure ſilver, after the Judgment is reverſed, if baſe money be eſtabliſhed in the mean time; whether reſtitution in theſe caſes may be of baſe money or not? Quære *Davis* Reports, fo.27. *b.* 28. *a.*

Mortmain.

IF a Rent be granted to an Abbot and his Succeſſors for eighty years; whether this be *Mortmain* or not? Quære 4 *H.* 6.9. Br. *Mortmain* 15. *Pl. Com.* fo.87. *a.*

Whether the alienation of one ſpiritual or religious man to another ſpiritual man, be *Mortmain* or not? Quære, *Keilway*, fo. 111. *pl.*37. 21 E.3.5. Br. *Mortmaine* 12. 11 *H.*4. 88. Br. *Mortmaine* 18. 16 *Aſſ. pl.* 1. Br. *Marmaine* 19.

Whether a Lord that is diſſeiſed at the time of the alienation in *Mortmaine*, ſhall have a year after his entry, for to enter for *Mortmaine*, or not? Quære, *Keilway*, fo.111. *pl.* 83.

Non

Non eſt factum.

TWo are bound in an Obligation, and the Seal of one of them is broken off, in an action brought againſt the other, whether he may plead *Non eſt factum* or not? Quære. 3 *H.*7.15. Br. *Non eſt factum* 21. See my *Reports*, *pa.*125. *pl.* 205.

Obligation.

A Man was bound to *J.N.* that he ſhould not uſe his Art in *D.* by two years, and by *Hull* this Obligation is againſt Law. *Quære* of this, becauſe that the reſtriction goes only to *D.* which is not a total reſtriction. 2 *H.*5.5. Br. *Faitz* 93. and *Obligation* 85. See the 8. *Rep.* fo. 125. *b.* and the 11. *Rep.* fo.53.*b.* and ſee my *Reports*, *pa.*77. *pl.* 121. *pa.*191. *pl.*238.

Two are bound in a Bond, and the Seal of one is broken off; whether this ſhall avoid the whole Deed, ſo that in an Action brought againſt the other, he may plead *Non eſt factum*, or not; Quære. 3 *H.*15. Br. *Non eſt factum*, 21. See my Reports, *pa.* 125. *pl.* 205.

A man is bound to a Baron and Feme, the Baron makes the Wife Executrix, and

dies; whether the Wife may bring an Action as Executrix to the Baron, or whether ſhe ought to bring it, *Nomine proprio*, as Survivor, or not, Quære, 4 *H.* 6. 5. Br. *Obligation* 35.

Occupans & Occupanti Conceditur.

A Leaſe is made to one, his Executors and Aſſigns *pur auter viæ*, the Leſſee makes a Leaſe for years, rendring Rent to him, his Executors and Aſſigns, and dies; Quære, Whether the Leſſee for years ſhall be an Occupant, and the Rent extinct; or whether that the Freehold ſhall revert to the firſt Leſſor, and the term be in eſſe. 15. & 16 of the Queen. *Dyer*, fo. 328. *pl.* 10. and ſee 38 *H.* 6. 4. And Quære in this caſe whether the Executor ſhall be a ſpecial Occupant, or not.

Outlawry.

IN Debt brought againſt an Executor, he pleads *Outlawry* in the Teſtator; whether this be a good Plea or not: Quære. 8 *E.* 4. 6. Br. *Utlagary*, 49. 3 *H.* 6. 17. and 32. 32 *H.* 6. 27.

Parceli

Parcell and not Parcell.

WHether a hundred may be parcel of a Mannor or not, Quære. 27 *H.* 6. 2. Br. *Parcel,&c.*2. and *Br. Scire facias*, 7. *Keilway*, fo.151. *pl.*51.

Whether an Annuity may be parcel of a Priory or not, Quære. 22 *E.*4.44. *Br. Parcel,&c.* 26.

Poſſibility.

A. By Indenture inſeoffes B. of Black-acre to the uſe of A. for life, the remainder in tail to C. the remainder in fee to D. with a Proviſo, if E. dies without Iſſue, that A. at any time by Indenture ſealed,&c. in preſence of four witneſſes, may alter &c. any uſe &c. A. by Indenture renounces, Surrenders, Releaſes,&c. to B.C. and D. the ſaid Power, Condition, Authority,&c. E. dies without Iſſue, A. by Indenture in preſence of 4. Revokes the firſt uſes, and limits new; whether this releaſe of a future poſſibility, or power of revocation ſhall barre it or not, Quære. 1. *Rep. Albanies Caſe. Coke* upon *Littleton*, fo. 265. *b.*

Preſentments to Churches.

A Preſentment is divolved to a Biſhop by Laps, who is deprived, whether the Metropolitan or the King ſhall preſent, *quære*, 7 *E.* 6. *Dyer* fo. 87. *pl.* 103.

Prohibition.

A Man deviſes that his Executors ſhall ſell his Land, and of the Monies ſhall give ſuch Portions to his Daughters, the Legatees ſue in Court Chriſtian for their Portions, whether a Prohibition lyes or not, Quære, 4 and 5, P. & M. *Dyer* fo. 151. *pl.* 5. *Trin* 9. of the Queen, *Dyer* fo. 264. *pl.* 41. See *Hobarts Reports*, *pa.* 371. *pl.* 343.

Rationabile parte bonorum.

WHether it be *Communis lex Angliæ*, for Women and Infants to have their reaſonable part of the Goods of the Defunct or not, Quære, See *Br. Rationabile parte bonorum per totum*, and See F. N. B. the Writ of *Rationabile parte bonorum*.

Recognizance.

WHether the Commons Houſe of Parliament may take a Recognizance or not, *Quære*, 1 *H.* 7. 20. Br. *Recognizance* 8.

Record, and matter of that.

A Man brought Debt upon a Recovery in a Court Baron whether the Defendant may plead *Nul tiel Record*, or whether he ought to ſay, *Nul tiel Recovery* or not, Quære, 34 *H.* 6. 49. Br. *Court Baron, &c.* 1. 34 *H.* 6. 42. Br. *Court Baron* 14. 9 E. 4. 14. Br. *Court Baron* 16. 28. *Aſſ. pl.* 14. Br. *Record, &c.* 66. F. N. B. fo. 71. Br. *Record, &c.* 70. See my Reports, *page.* 15. *pl.* 35.

Relation.

THE Father is diſſeiſed, the Son makes a Releaſe, and delivers it as an Eſcroule, to be delivered over to the Diſſeiſor at the death of the Father, the Father dies, the Deed is bailed to the Diſſeiſor; whether this ſecond Delivery ſhall relate to the firſt, and ſo avoid the Deed or not, Quære, 35 *H.* 8. *Dyer*, fo. 57. *pl.* 23. See the 3. *Rep.* fo. 35. *b.* See *Title Countermand* 1.

Releaſes.

WHether a Releaſe of a right upon a Condition ſubſequent be good or not, Quære. See Title Conditions.

Whether a Releaſe of all Actions real, be a good Bar in an Annuity or not, Quære, *Cooke* upon *Littleton*, fo. 374. *b.* *Dyer*, fo. 140. *pl.* 40. 19 *H.* 6. 37. 2 *H.* 4. 13. Br. *Annuity*, 13 & 43. *L.* 5 E. 4. 40. Br. *Annuity* 34. 21 E. 4. 83. Br. *Annuity* 39. 11 *H.* 7. 20. Br. *Annuity* 54. *Cooke* upon *Littleton*, fo. 2. *a.* and 285. *a.*

Feme Diſſeiſoreſſe takes husband, the Diſſeiſee releaſes to the Baron and his Heirs; whether this ſhall inure to him or to his wife, or not, *Quære*, 14 *H.* 8. 4. 21 *H.* 6. 41. *Keilway*, fo. 129. *a.*

A. by Indenture infeoffs B. of black Acre, to the uſe of A. for life, the remainder in Taile to C. the remainder in Fee to D. with a Proviſo, if E. dies without Iſſue, that A. at any time by Indenture ſealed, &c. in preſence of four Witneſſes, may alter, &c. any uſe, &c. A. by Indenture renounces Surrenders, Releaſes, &c. to B. C. and D. the ſaid power, Condition, Authority, &c. E. dies without Iſſue, A. by Indenture in preſence of four Witneſſes, revokes the firſt uſes, and limits new; whether this releaſe of a future poſſibility, or power

power of revocation, ſhall bar it or not, Quære, 1. *Rep. Albanies Caſe, Cooke* upon *Littleton*, fo. 265. *b.*

Two Men are bound joyntly and ſeverally to a third, who ſues the Bond againſt both, and after appearance enters a Retraxit againſt one of them; whether this ſhall amount to a Releaſe, ſo that it ſhall diſcharge the other or not, Quære. See my Reports *pa.* 95. *pl.* 165.

Where one Coparcener of a Rent marries the Ter-tenant, and the other releaſes to the Husband and Wife, how it ſhall inure, Quære, *Cooke* upon *Littleton*, fo. 273. *b.*

Where the Feme Meſne and the Tenant enter-marry, and the Lord Paramount releaſes to the Husband and Wife, how it ſhall inure, Quære, *Cooke* upon *Littleton* fo. 280. *a.*

Remainder.

WHether there may be a Remainder of a Rent *de novo*, or not, Quære, See *Title Rents* 2.

Remitter.

TEnant in Taile inſeoffs his Iſſue inheritable to the Taile within age, who

at

at full age makes a Leaſe for years, Tenant in Taile dies, whether the Leaſe be avoided by the Remitter or not, Quære, *Cooke* upon *Littleton* fo. 349. *a.* 33 *H.* 8. *Dyer*, fo. 51. *b.*

Rents.

WHether a Rent granted not of Cuſtomary Lands, as out of Lands deviſable, Gavelkind or Borough Engliſh, or the like, ſhall be of the nature of the Land, or not, Quære, 22 *Aſſ. pl.* 78. *Br. Cuſtomes* 34. *and Rents* 13. 16 *H.* 8. 4. *Br. Cuſtomes* 1. 21 *H.* 6. 10, *and* 11. *Br. Cuſtomes* 24. 4 E. 3. 32. *Br. Cuſtomes* 58. 14 *H.* 8. 7. *Br. Cuſtomes* 65. *and Br. Rents* 6. *and* 20. 26 *H.* 8. *Dyer pl.* 1. *and* fo. 140. *pl.* 38. *and* 153. *pl.* 11. *and* 192. *pl.* 23. See *Cooke* upon *Littleton*, fo. 111. *a.* for deviſe of a Rent ſee now the Statute.

Whether there may be a Remainder of a Rent *de novo*, or not, Quære, 7 *H.* 4. 4. *Br. Done & Remainder* 8. 15 E. 4. 9. *Br. Done & Remainder* 54. 8 *H.* 4. 19. Br. *Done & Remainder*, 58. *Pl. Com.* fo. 35. *a. Cooke* upon *Littleton*, fo. 298. *a.* 2. *Rep.* fo. 70. 76. *and* 78. 3 E. 3. See *Cooke* upon *Littleton*, before, 14 *H.* 7. 2. Br. *Surrender* 16. And ſee the Caſe immediately following.

A man recovers a Rent by Writ of Entry

try againſt Tenant in Taile of a Rent which had not being before the Grant made in Taile, whether the Recoveror ſhall have a Fee ſimple or not, Quære, 15 *E.* 4. 6. and 8. See 37 *H.* 6. 36. and *Pl. Com.* fo. 557. *a.*

Land of *B.* out of which a Rent is iſſuing, is given to another by Act of Parliament; whether the Rent be by this extinguiſhed or not, Quære, 21 *H.* 7. 3. *Br. Parliament* 28.

The Lord receives his Rent upon *Chriſtmas* day before dinner, and dies after dinner, and the Lord holds of the King, whether the King ſhall have the Rents of the Tenants arreare or not, Quære, 44 *E.* 3. 3. *Br. Preſentments to Churches* 4. and *Br. Rents* 2.

A man makes a Leaſe for years rendring Rent to himſelf during the term, and dies, whether his Heire ſhall have debt for the Rent arreare after, or not, Quære, See *Title reſervations.*

Requeſts.

A is bound to *B.* to deliver him two hundred weight of Hops, and *B.* to chuſe them out of twenty four bags, &c. whether *B.* is bound to requeſt *A.* to ſhew the bags for

for him to make his Election or not, Quære, See my Reports, *pa.* 74. *pl.* 113.

Remitter.

TEnant in Taile infeoffes his Son and Heire inheritable to the Taile, within age at the time of the Feoffment, who at full age makes a Leaſe for years by Deed Indented, or Deed Poll of the Land, and then Tenant in Taile dies, ſo that he is remitted; whether he ſhall avoid the Leaſe or not, Quære, *Cooke* upon *Littleton*, ſo. 349. *a.* 33 *H.* 8. *Dyer*, ſo. 51. *b.* See *Littleton. Sect.* 289.

A husband diſcontinues the Land of his wife, and goeth beyond Sea, and the Diſcontinuee lets the ſame Land to the wife for term of her life, and delivers ſeiſin to her, and after the husband comes back, and diſagrees to the Leaſe and Livery of Seiſin made to his wife in his abſence; whether this ſhall ouſte the wife of her Remitter, or not, Quære, *Littleton Sect.* 677. See *Cooke* thereupon.

A Husband diſcontinues the Lands of his wife, and the diſcontinuee is diſſeiſed, by the coven and conſent of the husband and wife, and after the Diſſeiſor letteth the ſame Lands to the husband and wife for life; whether in this caſe the wife ſhall be remitted or not,

not, *Quære*, *Littleton*, *Sect.* 678. See *Cooke* thereupon, fo. 357. *b.*

Two Joyntenants in Fee, the one of full age, the other within age, are diſſeiſed, and the Diſſeiſor dies ſeiſed and his Iſſue enters, the Joyntenant of full age dies; whether the Infant ſurviving may enter into the whole or not, Quære, See *Littleton. ſect.* 696. and *Cooke*, thereupon, fo. 364. *b.*

Reſervations.

A Man makes a Leaſe for years, rendring Rent to himſelf during the term, and dies; whether his Heire ſhall have Debt for Rent arrear after, or not, *Quære*, 27 *H.* 8. 19. *Perkins* 697. 698. 699. 22 *H.* 7. fo. 88. *b.* *Keilway.* 5. *Rep.* fo. 111. *a.* *Mallories Caſe*, *Pl. Com.* fo. 171. *a.* 21 *H.* 7. 25. 30 *H.* 8. *Dyer*, fo. 45. *Cooke* upon *Littleton*, fo. 47. *a. q.*

Whether a condition of re-entry may be reſerved to the Heire, not naming the Anceſtor, or not, Quære; for I doubt of it, upon the words of *Littleton*, *ſect.* 346. and 343. See *Cooke* thereupon, fo. 213. and 214.

Retorn

Retorn af Beaſts.

A Man diſtraines by two Horſes, the one worth 10 *l.* and the other 40 *s.* and he avowes the one for one Rent day, and the other for another, not making mention which for the one, nor which for the other, and the one is found for him, the other againſt him, Quære, of which horſe he ſhall have return. 2 *H.* 6. fo. 3. See 2 *H.* 6. 17. *Br. Retourne & avers* 1.

Revocation.

THe King preſents his Clerk to a Benefice, and befor inſtitution preſents another, whether this be a revocation of the former preſentation, or not, Quære, See my *Rep. pa.* 86.

Seiſin.

A Man who hath a Rent grants it over upon condition, the condition is broken; whether the Grantor ſhall have an Aſſize for the Rent after arreare, without a new Seiſin, or not, Quære, *M.* 15 *E.* 3. *Br. Title Aſſize* 407. *Cooke* upon *Littleton*, fo. 202. *b.* 15. *Aſſ.* 12.

A

A man hath Iſſue a Son and a Daughter by one venter, and a Son by another venter, and makes a Leaſe for life rendring Rent and dies; whether the receit of the Rent ſhall be a ſufficient Seiſin to make a *poſſeſſio fratris*, ſo that the Daughter ſhall inherit, or not, Quære, 35. *Aſſ. Pl.* 2. *Coke* upon *Littleton*, *fo.* 15. *a.* 14 *E.* 2. *Br. Seiſin* 43.

A man dies ſeized of ſeverall acres of Land in one County, his Heire enters generally in one of the Acres, whether this gives poſſeſſion of the other Acres or not, Quære, 21 *H.* 7. 33. *a. Coke* upon *Littleton*, *fo.* 15. *a. b. b.* See 39. *Aſſ. pl.* 16.

Statute.

WHether a Baron of the Realm may acknowledge a Statute or not, Quære, See 5 *E.* 4. 108. 8 *R.* 2. *proceſ.* 224. 5 *E.* 4. 100. *a.* 9 *E.* 3. *Bre.* 473. 39 *E.* 3. 35. *b. Dyer*, fo. 360. 9. *Rep.* fo. 117. 10 *H.* 4. 15 *D.* 1 *H.* 5. 14. 27 *H.* 8. 22. 14 *H.* 7. 21. 26 *H.* 8. 7. 14 *H.* 6. 2. 27 *H.* 8. 22. 35 *H.* 6. 146. *Dyer*, fo. 314. 48. *Aſſ. pl.* 6. 27 *E.* 3. *ca.* 1. *de premunire*. 15 *H.* 7. 9. *b.* 9 *E.* 4. fo. 2. 6. *Rep.* fo. 52. 15 *E.* 3. *ca.* 26. 5 *H.* 4. *ca.* 8. 3 *H.* 6. *fo.* 48. *per Cockin*, 9. *Rep. fo.* 69. 12 *H.* 7. 25. To the objection, that if a Baron cannot acknowledge a Statute, that it is void if he ſhall anſwer, 'tis not void, for debt lies. 7. *E.* 4. 27. or 24. *F. N. B.* 122. 22 *E.* 4. 22.

Surrender.

Surrender.

A Termor agrees, that his Leſſor ſhall make a Feoffment to a ſtranger, whether this be a ſurrender or not, Quære, 21 *H.* 7. 7. *Br. Surrender* 48. 28 & 29 *H.* 3. *Dyer, fo.* 33. *pl.* 13. 14, 15, 16. See 40 *E.* 3. 24. *Br. Surrender*, 1. 8. *Aſſ. Br. Surrender* 25. 40. *Aſſ. pl.* 16. *Br. Surrender*, 35. See *Dyer. fo.* 363. *pl.* 22. *Cooke* upon *Littleton, fo.* 48. *b.*

The King Leaſes a Meſſuage for years rendring Rent, the Leſſee after takes a patent of the office of the cuſtody of the ſaid meſſuage; whether the term be ſurrendered or not, Quære, *Paſch.* 3. of the Queen *Dyer, fo.* 200. *pl.* 62.

Taile.

GRandfather, Father and Son, Lands are given to the Grandfather and to his Heirs begotten by the Father, the Father dieth, the Grandfather dieth; whether the Son be in as Heire to the Grandfather begotten upon the body of his Father; and whether the wife of the Grandfather in that caſe ſhall be endowed or not, *Quære*, 12 *H.* 4. 2. *per Horton, Coke* upon *Littleton*, ſo. 20. *b.*

Lands

Lands are given to a Man and his Wife, and to one Heir of their Bodies lawfully begotten, and to one Heir of the Body of that Heir only; whether this be an Eſtate Taile or not, *Quære*, for I doubt of it, 39 *Aſſ. pl.* 20, 20 *H.* 6. 35. 5 *H.* 4. 7. *b.* 14 *H.* 4. 15. *Littleton, Sect.* 13. and *Coke* thereupon, fo. 19. *a.* and fo. 20. *a. b.* and fo. 22. *a.*

A Man gives Land to another, *& hæredi maſculo de corpore ſuo*, what Eſtate this is, *Quære*, *Fide Regiſtrum judiciale*, fo. 6.

A Man deviſes Land to a Man, and to the Heirs Males of his Body, who hath Iſſue a Daughter, who hath Iſſue a Son; whether this Son be Inheritable by force of this Deviſe, or not, Quære, See *Littleton, ſect.* 719. 1 *H.* 6. 24. 11 *H.* 6. 13, 14. 28 *H.* 6. *Title Deviſe* 18. *Statham. Pl. Com.* fo. 414. *b.* 20 *H.* 6. 43. 37 *H.* 8. *Br. Title Done & Remainder* 61. *Title Noſme*, 1 & 40. *Perkins* 506. *Coke* upon *Littleton*, fo. 25. *a. b.*

Lands are deviſed to one for life, the Remainder to the next Heir Male of B. in Taile, B. hath Iſſue two Daughters, and each of them hath Iſſue a Son, and the Father and Daughters die; whether the Remainder be void for the incertainty, whether the eldeſt ſhall take it becauſe he is worthieſt, or whether both of them ſhall take, for that they both make but one Heir, Quære,

11 *H.* 6. 13. 9 *H.* 6. 25. *Coke* upon *Littleton*, fo. 25. *b.*

Land is given to the Son, and to the Heirs of the Body of his Father (then dead) ingendered, this is a good Taile in him, but whether this younger Brother ſhall Inherit by force of his Gift, or not, Quære, *M.* 4 & 5. *P. & M. Dyer*, fo. 156. *pl.* 24. 25. *Coke* upon *Littleton*, fo. 26. *b. Hill.* 8. of the Queen *Dyer*, fo. 247. *pl.* 76. See 12 *H.* 4. 1 & 2. *Br. Taile* 10.

A Rent is granted in Taile, whether the Grantee may make it an Annuity or not, becauſe he ſeems to have an Election *ſecundum formam doni*, to take it as a Rent Charge, or as an Annuity, and the Statute *De donis conditionalibus ſes*, that *Voluntas donatoris in cauta ſua manifeſte expreſſa de cætero obſervetur*, and his will is obſerved by making it an Annuity or a Rent Charge; for he gave him by the Grant ſuch an implicit power. To this it may be ſaid, That if he might at his Election make it an Annuity, then it were no more an Intaile, but a Fee conditional as at Common Law, and then after Iſſue had, he may alien, and bar the Iſſue, which ſeemeth contrary to the will of the Donor, *Ideo* Quære.

Tenant in Taile makes a Leaſe for years, to commence after his death, rendring

Rent,

Rent, the Iſſue accepts the Rent; whether this ſhall bar his Entry or not, Quære, *Dyer*, fo. 279. *a. pl.* 7. fo. 69. *a. pl.* 30. fo. 246. *a. pl.* 69. *Coke* upon *Littleton*, fo. 44. *a. Pl. Cont.* fo. 430.

Tenant in Taile makes a Leaſe for years, rendring 20 *s.* Rent, and after releaſes 19 *s.* and dies, and the Iſſue accepts 12 *d.* whether he may diſtrain for the 19 *s.* more or not, Quære, 13 & 14 of the Queen *Dyer*, fo. 304. *pl.* 53.

Tenant at will and ſufferance.

TEnant at Will is ouſted, and the Leſſor diſſeſed, whether by this the Leaſe at will be determined or not, Quære, 38 *H.* 6. 27. *Br. Tenant pro copie, &c.* 6. 11 *E.* 4. 3. *Br. Tenant pro copie, &c.* 11.

Whether Tenant at Will may determine his Will, a day or two before the Feaſt, in which he ought to pay his Rent, and thereby be excuſed of the payment of it, or not, Quære, 20 *H.* 7. fo. 65. *pl.* 6 *Keilway.* See *Coke* upon *Littleton*, fo. 55. *b. letter c.*

Whether a Bargainee before Inrolment, or Entry, ſhall be a Tenant at will or not, Quære, See my *Reports*, *pa.* 62. *pl.* 97. & *pa.* 69. *pl.* 108. See *Littleton ſect.* 70.

Tenures.

TEnant by Knight Service makes Gift in Taile, reſerving Fealty and Rent; whether the Donee in Taile ſhall hold by Knight Service, and the other Services eſpecially reſerved, or in Socage only, Quære, *Coke* upon *Littleton*, fo. 23. *a.* 33 *H.* 8. *Dyer*, fo. 52. *pl.* 3. See *Dyer*, fo. 45. *pl.* 1.

Teſtaments.

WHether a Feme Covert may make a Teſtament without agreement of her Husband, of things in Action, as Obligations, and the like, due to her before the Coverture, or not, *Quære*, 4 *H.* 6. 31. *Br. Teſtament, &c.* 9. 39 *H.* 6. 27. *Br. Teſtament*, 10. 12 *H.* 7. 22. 23. 24. *Br. Teſtament* 11. 18 *E.* 4. 11. *Br. Teſtament* 13. 5 *E.* 2 *Br. Teſtament* 21. See 4. *Rep.* fo. 61. *a.* 5. *Rep.* fo. 10. *Dyer*, fo. 354. *b. pl.* 34.

Time.

WHether a Gardian of a Priſon ſhall forfeit his Office for an eſcape in the night, or not, Quære, 5 *E.* 4. 26. *Br. Forfeiture, &c.* 54.

Tryall.

Tryall.

A Man is mortally wounded in *France*, and dieth thereof in *England*, whether an Appeale in this Caſe (for it is not puniſhable by the Common Law) doth lie upon the Statute of 1 *H.* 4. *ca.* 14. or not, Quære, *Coke* upon *Littleton*, fo. 74. *a. b.*

An Earl or Lord of *Ireland* commits Treaſon in *Ireland* by open Rebellion, whether he may be arraigned and put to his Tryal in *England* for the offence, by the Statute of 26 *H.* 8. *cap.* 13. 32 *H.* 8. *cap.* 4. 35 *H.* 8. 2. or 5 *E.* 6. 11. or not, Quære, 19. & 20. of the Queen, *Dyer*, fo. 360. *pl.* 6. *Coke* upon *Littleton*, fo. 261. *b.* See the 7. *Rep.* fo. 15. *b.*

Tythes.

A Parſon Leaſes parcell of his Glebe Land for years, rendring Rent; whether the Leſſee ſhall pay Tythes or not, Quære. 30 *H.* 8. *Dyer*, fo. 43. *pl.* 21.

The Inhabitants of a Pariſh have a Chappel of Eaſe, and a Cuſtome, that thoſe within ſuch a Precinct ought to find a Rope for the third Bell, and to repair part of the Mother Church, in conſideration of which they have been freed from payment of any Tythes

to the Mother Church; whether this be a good Cuſtome or not, Quære. See my *Reports*, *pa.*91. *pl.*151.

Veſt and Deveſt.

A Mannor was given to *S.* by Parliament, and after a Tenant who held of it by Knights-Service, died; after *S.* was attainted of Treaſon, and the firſt Act reverſed in all points, the King ſeized the Mannor, and granted it to his Mother; whether the Patentee ſhall have the ſaid Ward, or not, becauſe it was a thing veſted, Quære. 3 *H.* 7. 15. Br. *Parliament* 39. See 4 *H.*7.10. Br. *Parliament* 41. *Dyer*, fo. 25. pl. 163. See *Keilway*, fo.125. pl.86. 21 *H.*6.56. *Br. Preſentments, &c.* 22.

A Diſſeiſee of a Mannor ſuffers the Diſſeiſor to be in poſſeſſion untill a Ward falls, and after re-enters, who ſhall have the Ward? Quære. 2 *H.*7.2. *Br. Garde* 65. See *Dyer*, fo.25. pl.163. and the Caſes immediately before.

View,

View.

A *Precipe quod reddat* is brought againſt two, the one acknowledges the Action, and the other demands the View; whether he ſhall have it, or not? Quære. 14 *H.* 6. 5. *Br. Dilatories* 9. and *View* 68.

Villeinage and Villeine.

A Freeman marries a Nieſe, whether this be an Enfranchiſement for ever, or for life only, Quære. The Lad marries his Nieſe, whether this be an Enfranchiſement for ever, or no, Quære. See Title *Enfranchiſements.*

Voucher.

THe Tenant vouches A. who is returned dead, upon the Writ of Summons; whether he may now vouch in another Line, or not, Quære. 41 *E.* 3. 28. *Br. Counterplea de Voucher* 56. and Br. *Voucher* 18. 43 *E.* 3. 3. Br. *Voucher* 21.

Uſe and Uſes.

A Man in conſideration of marriage, covenants, That immediately after his death, his Land ſhall inure and remain to his Son, whether this raiſes a uſe immediately to his Son, or not, *Quære*, 34. and 35.

H. 8. Dyer, fo. 55 pl. 3. and 4. Mich. 1. M. Dyer. fo. 96. pl. 41. Dyer. fo. 162. pl. 48. and 49. fo. 235. pl. 20. 21. fo. 166. pl. 8. and 9. fo. 325. pl. 37. and fo. 90. pl. 18.

Wager of Law.

A Man brings Debt upon a Recovery in ancient Demeſne which is a Court Baron; whether the Defendant may wage his Law, or not, Quære, 34 H. 6. 49. Br. *Court Baron, &c.* 1. *Leygager* 11. and *Record. &c.* 8. 1 H. 7. 25. Br. *Leygager* 105. See my *Reports, pa.* 15. *pl.* 35.

By the Cuſtome of *London* a man cannot wage his Law for bourding, but whether in an Action brought at *Weſtminſter* he ſhall have his Law, or not, *Quære.* See *Title Cuſtoms* 1.

Ward.

A Man of *non ſane memory* makes a Feoffement and dies, his Heir recovers by a *Dum non fuit compos mentis*, whether he ſhall be in Ward or not, *Quære*, 7 H. 4. 12. Br. *Garde* 24.

Diſſeiſee of a Mannour ſuffers the Diſſeiſor

ſor to continue poſſeſſion till a Ward fals, and after re-enters; who ſhall have the Ward. Quære, 2. *H.* 7. 2. *Br. Gard*, 65. See *Keilway. fo.* 111. *pl.* 83.

A Mannour was given to *S.* by Parliament, and after a Tenant which held of it by Knights Service died, after *S.* was attainted of Treaſon and the Act reverſed by Parliament in all points, the King ſeized the Mannour, and granted it to his mother; whether the Patentee ſhall have the Ward, or not, *Quære*, 3 *H.* 7. 15. *Br. Parliament*, 39. See 4 *H.* 7. 10. *Br. Parliament* 41. See *Title Veſt & Deveſt.*

Tenant in Socage deviſes by his will, the cuſtody of his Heire apparent within age to B. whether this ſhall barre the Gardian in Socage, or not, Quære, *Keilway*, fo. 186. *pl.* 1.

A man ſeized in Fee before the Statute of 27 *H.* 8. infeoffes *B.* in Fee, to the uſe of him and his wife, and the Heires of their two bodies ingendered, and for default of ſuch Iſſue, to the uſe of the Feoffer and his Heires in Fee, after the Statute they haue Iſſue, the husband dies, the Iſſue within age; whether he ſhall be in Ward during the life of his mother or not, Quære, *E. & 4. P. & M. Dyer*, fo. 131. *pl.* 6. See 23 *H.* 8. *Dyer*, fo. 7. *pl.* 11.

Warranty.

Warranty.

WHether a man may grant a Rent *de novo* out of Land for life, or &c. with warranty, becauſe there can be no Title precedent to the Rent, Quære, 2 *H.* 4. 13. 30 *H.* 8. *Dyer*, fo. 42. *Temps. E.* 1. *Admeaſurement* 16. 32 *E.* 1. *Voucher*, 294. 30 *E.* 1. *Exchange* 16. 9 *E.* 4. 15 *E.* 4. 9. 29 *Aſſ.* 13.

A man infeoffes another of an Acre of Land with Warranty, and dieth ſeized of another Acre, having Iſſue a Son and a Daughter by one venter, and a Son by another, the eldeſt Son entreth and dieth, the Land diſcends to the Siſter; In this caſe the Warranty diſcendeth on the Son, and he may be vouched as Heire, and the Siſter as Heire of the Land; in which caſe the Son and Heire by the Common Law having nothing by diſcent, the whole loſſe of the recovery in value lieth upon the Heir of the Land, albeit he be no Heire to the Warranty. Then put the caſe that there is a Warranty Paramount, who ſhall deraigne that Warranty? and to whom ſhall the recompence in value go? Quære, *Coke* upon *Littleton*, fo. 376. *b. Pl. Com.* fo. 515.

Land was deviſed to the Father for life, the remainder to the next Heire Male of the Father, and to the Heirs Males of his body, the Deviſor dies, the Fathes infeoffed *B.* with

with Warranty; by the Feoffement the contingent remainder is deſtroyed, but whether the Warranty ſhall binde the remainder, or not, Quære, 1. *Rep. Archers Caſe.*

A Servant ſells Clothes, and warrants them; whether deceit lies againſt him, or not, Quære, The ſale being the ſale of the Maſter, and the warrant the warrant of the Servant. 11 *H.* 4. 6. *Br. Deceit*, 29. and *Garranty* 61.

A man knowing a thing to be corrupt and naught, ſels it, whether Deceit lies againſt him for the knowledge, without Warranty, or not, Quære, 20 *H.* 6. 34. *Br. Deceit*, 2. 9 *H.* 6. 53. *Br. Garranty* 93.

Waſte.

IF a man fix a Furnace or Fats *in medio domus*, and not to the wals, or a poſt in the Land not to the wals, he may take it away within the Term; but if he ſuffer it till the Term be ended, the Leſſor ſhall have it; and the taking of them by the Termer within his Term is not waſte, for the houſe is not impaired by it, by *Kings-Mill Juſtice*, and *Grevil* Serjeant, *quod nullus negavit. Tamen* Quære, 21 *H.* 7. 26. *Br. Chattels, &c.* 7. See *Br. Chattels, &c.* 11.

Tenant for years commits waſt, and after

ter ſurrenders to him in the reverſion, who accepts it, excepting the waſte; whether an Action of waſte lies, or not, Quære, 19 *H.* 6. 66. *Br. Waſte* 86. 14 *H.* 8. 10. 11. *Br. Waſte* 95. 23 *H.* 8. *Br. Waſte* 138. 14 *H.* 6. 14. *pl.* 48. See *Coke* upon *Littleton*, fo. 285. *a.*

A man makes a Leaſe for life of a Houſe and Land, which Houſe was ruinous at the time of the Demiſee made, the Leſſee cuts down Trees to repair; it whether this be a juſtifiable waſte, or not, Quære, 12 *H.* 8. 1. 29 *H.* 8. *Dyer. fo.* 36. *a. Coke* upon *Littleton*, *fo.* 53. *a. letter*, *g.* and *fo.* 55. *b. letter*, *d.*

FINIS.

An Exact TABLE to the *Actions* for *Slander.*

AN *Introduction to the whole Diſcourſe, from Page* 1. *to Page* 8.

Wherein is Remarked,

The Occaſion of the Authors treating upon this Subject, *Page* 2.
The diſhonour which Actions of this nature do bring upon the Law, and the Profeſſors thereof. ibid.
How unlawful, and intolerable it is for Chriſtians to proſecute one another out of malice, or for every ſmall and vain brabble, 3
Actions for Slander *not to be maintained by any ſtrained Conſtruction or Argument, nor any favour extended for their ſupportation,* ibid.
The paucity of Actions for Slander, from Ed. 3d's *time (and before) to the* 38. *Year of* H. 8. *and their Multiplicity in the Queens time, King* James *his time, and ſince,* 5, 6
The Authors ſcope and intent in this Treatiſe

to

to bridle rash and inconsiderate Tongues, 7
Where words which touch or concern a man in his life shall be actionable, from page 8. *to page* 13
Where words in such case which are equivalent to words Actionable, shall bear an Action, 13, 14
Where Words in such case which are by way of interrogation, or by way of hear-say, or relation, or lastly by way of Negation onely, shall be Actionable, 14
Where words in such case that imply an affirmative shall be actionable, 16
Where in such case being too general, or not positively affirmative, they will not be actionable 17
Where words in such case of a double or indifferent meaning, shall be taken in the best sense for the Speaker, and so not actionable, 20, 21, 22
Where words in such case though of a double or indifferent meaning, shall be construed according to common intent, 23
Where words in such case doubtful in sence or meaning, will not be actionable, 24
Where words in such case incertain of themselves, or the persons of whom they are spoken, will not be actionable, pag. 25, *to* 29
Where in such case, former words actionable, qualified with subsequent words not actionable, will not bear an Action, 29
Where words in such case that do not import an an act, but an intent onely, or an inclination,

to

to it, ſhall not be Actionable, pag. 30, 31, 34
Where words apparently impoſſible, will not be Actionable, 34
Where it doth appear by the Record, that the ſpeaking of the words could be no damage to the Plaintiff, the words will not be Actionable, 35
Where the words might be a dammage to the Plaintiffe, yet if the ground of that damnification doth not ſufficiently appear by the Record, the action will not lye, 36
Where a man is charged with a crime, or offence by ſcandalous words, and it doth not appear by the words, that he had notice or knowledge of the ground or occaſion of the crime or offence, in ſuch caſe no action will lye for ſuch words. 37
Where ſcandalous words which touch or concern a man in his Liberty, will be actionable, and where not? 39
Where words which touch or concern a man in member, or in any corporall puniſhment, will bear an action? 42, 45
Where words in ſuch caſe will not bee actionable, either by reaſon of the doubtfull or indifferent meaning of them, or the incertainty of the words themſelves, or of the perſons of whom &c. or upon the other grounds before layd down? 46
Where ſcandalous words which touch or concern a man in his Office, or Place of Truſt, will bear an action, and where not? 50
Where ſcandalous words which touch a man in

his profession or function, by which he gaines his living, will bear an action, and where not ? 57

Where words spoken in scandall of a mans Title, or which tend to his disinheritance, will be actionable, and where not ? 65

Where scandalous words which tend to the hinderance or losse of a mans advancement or preferrement, or which cause any particular damage, will be actionable. 70

Where words which be actionable of themselves, and where without alledging of a particular damage. 72

Where words which charge a man with any dangerous infectious disease, by reason of which he ought to seperate himself, or be seperated by the Law, from the Society of men, will be actionable. 77

Two things very considerable in all actions for words; causa dicendi, & quo animo, *with what affection the words were spoken, whether out of malice or not,* 78, 79

Where the speciall finding of the Jury will warrant the Declaration of the Plaintiffe, and where not ? 83

For what Suit or other Legall prosecution in course of Justice, an Action will lye, for what not ? 92

For what Scandall of a Noble man, or great Officer, &c. an action De Scandalis Magnatum, *will lie upon the Statutes of* 3 E. 1. cap. 33. *or* 2 R. 2. cap. 5. *for what not ?* 98

An

An (innuendo) *ſhall never make words actionable, which of themſelves are not actionable from pag.* 102. *to* 106

For the Office of an (innuendo.) *See pag.* 107

Where an Averrement in actions upon the caſe, for words will be neceſſary, and where good, and where not, 108

Where a Juſtification ſhall be good, and where not. 115

Where one calls another perjured man, *or* procurer of perjury, *an Action lyes; but not for ſaying he is* a falſe forſworn man, a Vermin of the Earth, a falſe brother, or an Hypocrite in the Church. 119

See ſeverall additionall Caſes explanatory to the former. from pag. 119. *to* 128

Where Actions for words are maintainable in London *by the Cuſtome there of which no Action will lye at the Common Law, See pag.* 128. 129

Of Libells, what ſhall be ſaid to be a Libell, and who a libeller; as alſo what ſhall be a publiſhing of a Libell, and what not; and what puniſhments ſhall be inflicted upon the contrivers and publiſhers of Libells, from pag. 131. *to* 140

Of defamations determinable in the Spirituall Court. from pag. 141. *to* 144

Where an Action of the Caſe will lie for words of which the Spirituall Court hath Cognizance; and where not. 144

An Exact Table to the Treatiſe of Arbitretments.

WHat (and how many) things are incident to every Award? pag. 151

What perſons are capable to ſubmit to an Arbitrement, and what not? 152

What things may be ſubmitted to an Arbitrement, and what not? *from* 153 *to* 156

Submiſſion to an Award may be either { *Generall* or *Speciall*, *Abſolute* or *Conditionall.*

And what they are? *See pag.* 157. 158

Who may be Arbitrators, and who not? 159

What Arbitrators are, and their power? 160

Whether the power of Arbitrators be aſſignable or not? 161

Whether the Authority of Arbitrators be countermandable or not? 164

Whether it be countermandable without Deed or not? 166

Whether there ought to be notice of the Countermand? or not. 167

What an Arbitrement is, 168

Where

Where an Award ſhall be void, for that it is not according to the ſubmiſſion in reſpect of the perſons, 169

Where an Award ſhall be void, for that it is made of part only of the things or matters contained in the Submiſſion, 176

An Arbitrator may make an Award of one matter onely, if he have notice of no more 180

Where an Award ſhall be void, for that it is not according to the ſubmiſſion in reſpect of the circumſtances of it? 181

In what caſe an Arbitrement ſhall be totally void, and where in part only, 183

Where an Obligation ſhall be forfeited for not performing of an Award, which is void in part, or in the whole, and where not? 187

Whether the Compromittors which have bound themſelves to ſtand to an Award, are bound to take notice of it at their own peril, or not? 190

Where an Award ſhall be void in Law for incertainty? 192

An Award which doth refer, or may be reduced to a certainty, is good, 198

Where an Award ſhall be void in Law for impoſſibility? 199

Where the thing awarded lyes not in the power of the party himſelf, without the aid of a third perſon, in ſuch caſe the Award is void, 202

Where an Award ſhall be void by reaſon of the

not indifferencie of it, or because it is made of one side only? 205
Where there is no means by Law for either party to attain unto that which is awarded him, the Award is void, 210
Where an Award shall be void, because it is not final, 214
Where an Award against Law shall be void? 218
Where an Award made at several times, or by parcels, shall be void, and where not? 219
Of the Circumstances of a Submission to Arbitrements: and first that it be in writing, 238
Of the Power given to Arbitrators, 239
Of time and place, ib.
An Indenture of Submission to an Award, 240
Of binding the Parties to perform the Award, 243
The Condition of an Obligation to perform an Award, 244
Of the Condition to perform an Award of Lands 247
An Arbitrement or Award of Lands by which the party Covenanteth to perform it, 248
Another Arbitrement of Debt, where the parties are bound to perform it, 253
An Arbitrement or Award of Debt, made by an Earl upon submission by Bond, 257
Of Notice of the Arbitrement, 261

Of the finall cauſe & effects of Arbitrements. 262

An Award made by an Arbitrator touching Coppy-hold lands between an Alderman of London and another. 263

An Award reciting that either of the parties ſtand bound to other to performe the ſame, and that it is made before the prefixed time in the Obligation, and with the full conſent of both the parties. 267

Pleadings in Arbitrement.

THe Defendant pleads that the Arbitrators made no Award before the day ſpecified in the Condition; The plaintiff in his Replication ſets forth the Arbitrement, and aſſignes the breach of it ſpecialy: The defendant by his Rejoynder maintaines his Plea, and takes Iſſue upan nullum fecerunt Arbitrium. 269. 270. 271

The Defendant pleads, That the Arbitrators made an Award in writing under their hands & ſeals ready to be delivered to the parties, which Award was generally performed; The plaintiff replyes, That the defendant did not diſcharge him of the forfeiture of a Recognizance according to the Award; The defendant Rejoyns, That he did diſcharge the plaintiff of the Recognizance according to the Award; The plaintiff demurrs ſpecialy, for that the defendant doth not particularly ſhew how he was diſcharged of the Recognizance; The defendant joyns in Demurrer, Cur adviſare vult. 272. to 277

The defendant pleads, that the Arbitrator did not deliver the Award according to the ſubmiſſion. 278

In Debt upon a Bond with Condition for performance

mance of an Arbitrement, after Oyer of the Condition, the Defendant pleads the Arbitrement in hec verba (in which the defendant covenants to assure such Freehold lands, and surrender such Coppyhold lands) amongst other things (to the plaintiff and his heires) and saith that he hath performed the same generaliy; The plaintiff replyes, That the defendant did not surrender the Coppyhold (or Native lands) as he hath alledged in his plea.
281 to 297

The Defendant pleads an Arbitrement before the last Continuance of the Declaration; The plaintiff replyes, that the Arbitrators made no such Arbitrement, Issue thereupon. 298
299

The Defendant pleads an Arbitrement in bar, and saith that he hath paid the money according to the Arbitrement mentioned in the Condition of the Obligation, upon which the plaintiff brings his action; The plaintiff in his replication assignes for breach of the Arbitrement, that the defendant did not pay 40 s. at one of the Feasts named in the Award; The defendant in his Rejoynder saith he paid the 40 s. at the Feast aforesaid, and takes Issue thereupon. 300 to 305

In Debt upon an Obligation with Condition for performance of an Arbitrement, the defendant pleads, that he gave bond to the plaintiff for the money mentioned in the Arbitrement; The plaintiff replies that the defen-

dant made no ſuch bond, Iſſue thereupon? 306

The Defendant pleads an Arbitrement in bar, and that he hath performed it generally; The Plaintiff in his Replication proteſting that the Defendant hath not performed the Arbitrement, for Plea he ſhews ſpecially wherein the Arbitrement was not performed; The Defendant takes Iſſue upon the breach aſſigned by the Plaintiff in the Arbitrement. 307, 308

In Treſpaſs the Defendant pleads, That there was an Award made between him and the Plaintiff, as well of the Treſpaſs mentioned in the Declaration, as of all other Treſpaſſes; wherein it was awarded, That the Defendant ſhould pay 10 s. &c. to the Plaintiff, which he hath performed; The Plaintiff Replyes, That the Arbitrators made no ſuch Award. 309 to 311

In Debt upon a Bond conditioned for the performance of an Award, the Defendant pleads, That the Arbitrators made no ſuch Award; The Plaintiff Replyes, That the Arbitrators did make an Award, which the Defendant hath not performed; And aſſigns for breach, That the Defendant hath not paid the money at the time appointed, according to the Award; Rejoynder and Iſſue no ſuch Arbitrement. 311. to 314

The Defendant pleads, That the Arbitrators made no Award, but that T. one of them dyed before the time limited for the Award

to

to be delivered to the parties, and that he earneſtly requeſted the Arbitrators to make the Arbitrement; The Plaintiff proteſting, that the Defendant did not requeſt the Arbitrators to make their Award; for Plea ſaith, That T. was living ſuch a day, and traverſes his death, with Iſſue thereupon. 315. *to* 317

In Debt upon a bond conditioned for performance of an Award, the defendant proteſting the Arbitrators made no Award, for plea he ſaith, That it was not delivered, or ready to be delivered at the day mentioned in the Condition; The Plaintiff Replies, That the Arbitrators did make an Award ready to be delivered (at the day in the Condition) under their hands and ſeals, and ſets forth the tenour thereof, with the aſſignment of the breach on the Defendants part; The Defendant maintains his Plea, viz. No ſuch Award; *and takes Iſſue thereupon.* 318 *to* 320

A Table to the Quæries.

A

Acceptance, pag. 401
Accord, 402
Acquittance, *ibid.*
Administrator & Administration, 403
Annuity. *ibid.*
Appeal, 404
Apportionment. 405
Arbitrement, *ibid.*
Arrerages, 406
Assets by discent, and Inter-maines. *ibid.*
Attachment of goods, &c. 408
Attaint, *ibid.*
Atturnment, 409

B

Bayl and Mainprize, 409
Baily *ibid.*
Baron & Feme, 410
Barr, 411

C

Cessavit, 412
Champerty, *ibid.*
Charge. *ibid.*
Charter of Pardon, 413
Clergie, *ibid.*
Commoner & Common, *ibid.*
Conditions, 414
Confirmation, 417
Copyhold. *ibid.*
Corone, &c. *ibid.*
Corporations, &c. 418
Covenant, 419
Countermand, 420
Court-Baron, County Court, & Hundred, 421
Customes. 422

Damages.

D

DAmages, 422
Darrein Presentment, 423
Debt. *ibid.*
Deeds Inrolled, 424
Demands and Demandable, 425
Denizen and Alien, *ibid.*
Detinue of goods, *ibid.*
Disclaimer, 426
Discontinuance, 427
Dispensation, *ibid.*
Disseisor and Disseisin, 428
Distress, *ibid.*
Distribution, *ibid.*
Dower 429
Duresse and Manasse, *ibid.*

E

EMbasement of Money 430
Emblements, *ibid.*
Entry lawful, *ibid.*
Enfranchisement. 431
Error, *ibid.*
Escape, 432
Escheat, 433
Estates, *ibid.*
Estoppe. *ibid.*
Executors 434
Extinguishment and Suspension, 436, 437

F

FEoffements of Land 438
Fines levied of Lands *ibid.*
Forfeiture of Lands and Goods, and Offices 439

G

GArdian in Soccage, 440
Grants of Common mon persons, *ibid.*
Grants of the King, 441

H

HEire, 442

I

INcertainty 442
Instance and Instant, *ibid.*

Joynder

Joynder in Action, 443
Joynt-Tenant, &c. *ibid.*
Juſtification, 444

K

KIng and Queen, 445

L

LAcheſſe, 446
Leaſes, *ibid.*
Licenſe, 447
Livery and Seiſin, 448

M

MAintenance, 449
Monies, and embaſement of them, *ibid.*
Mortmaine. 450

N

NOn eſt factum, 451

O

OBligation, 451
Occupans and Occupanti conceditur. 452
Outlawry, *ibid.*

P

PArcell and not Parcell, 453
Poſſibility. *ibid.*
Preſentmẽts to Churches, 454
Prohibition, *ibid.*

R

RAtionabile parte bonorum, *ibid.*
Recognizance, 455
Record, and matter of that, *ibid.*
Relation *ibid.*
Releaſes, 456
Remainder. 457
Remitter. *ibid.*
Rents, 458
Requeſts 459
Remitter 460
Reſervations 461

Retorne

Retorn of Beasts, 462
Revocation. *ibid.*

S

SEisin, *ibid.*
Statute 463
Surrender, 464

T

TAile, *ibid.*
Tenant at will and sufferance, 467
Tenures, 468
Testaments *ibid.*
Time, *ibid.*
Tryal, 469
Tythes, *ibid.*

V

VEst and Devest, 470
View. 471
Villeinage and Villeine, *ibid.*
Voucher *ibid.*
Use and Uses *ibid.*

W

WAger of Law, 472
Ward, *ibid.*
Warranty, 474
Wast. 475

FINIS.